

The Weak Link

The role of local institutions in accountable natural resource management in Ghana

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OXFAM RESEARCH REPORT

THE WEAK LINK

THE ROLE OF LOCAL INSTITUTIONS
IN ACCOUNTABLE NATURAL
RESOURCE MANAGEMENT

GHANA



OXFAM
America

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Figure 1.

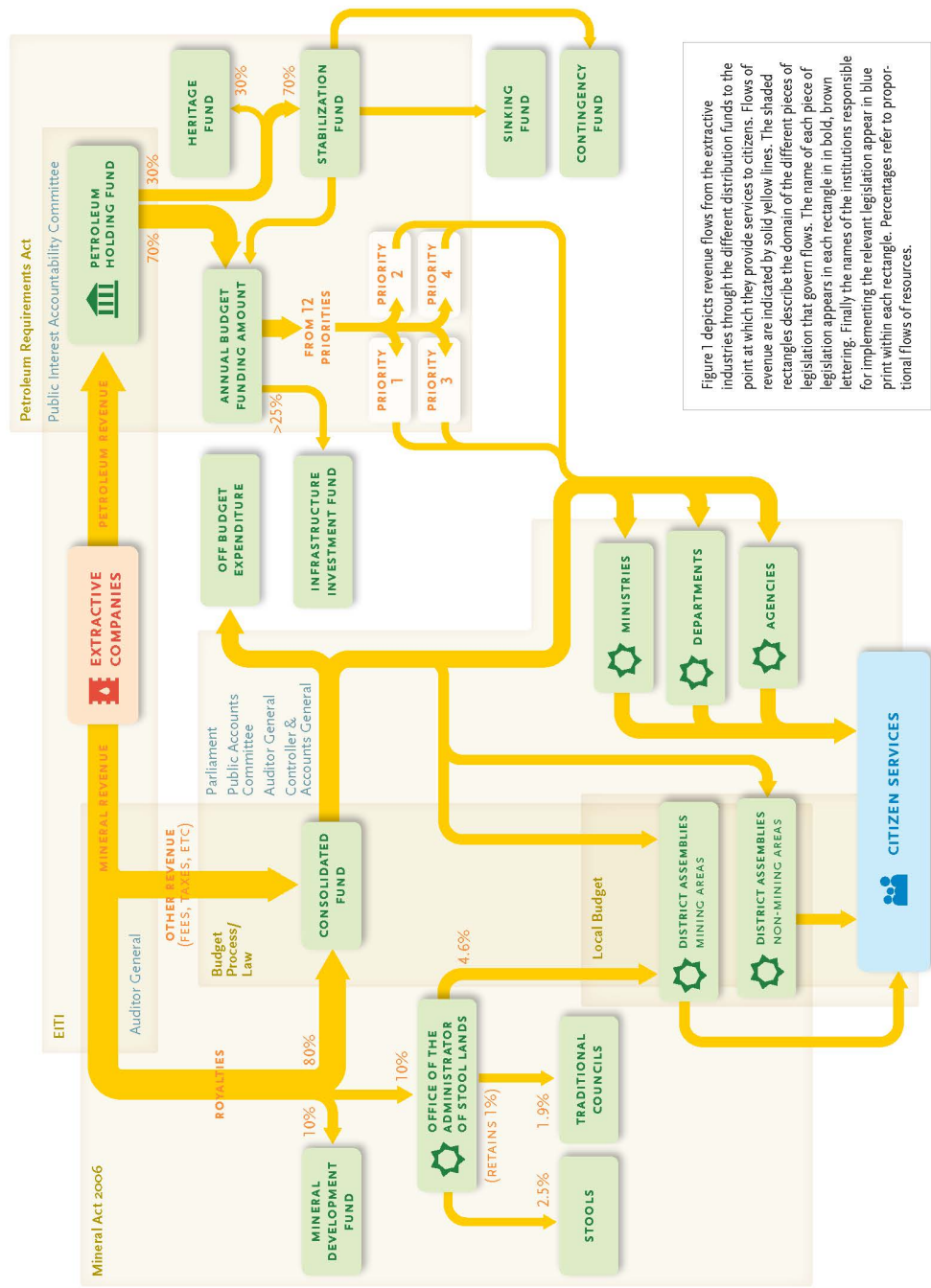


Figure 2.

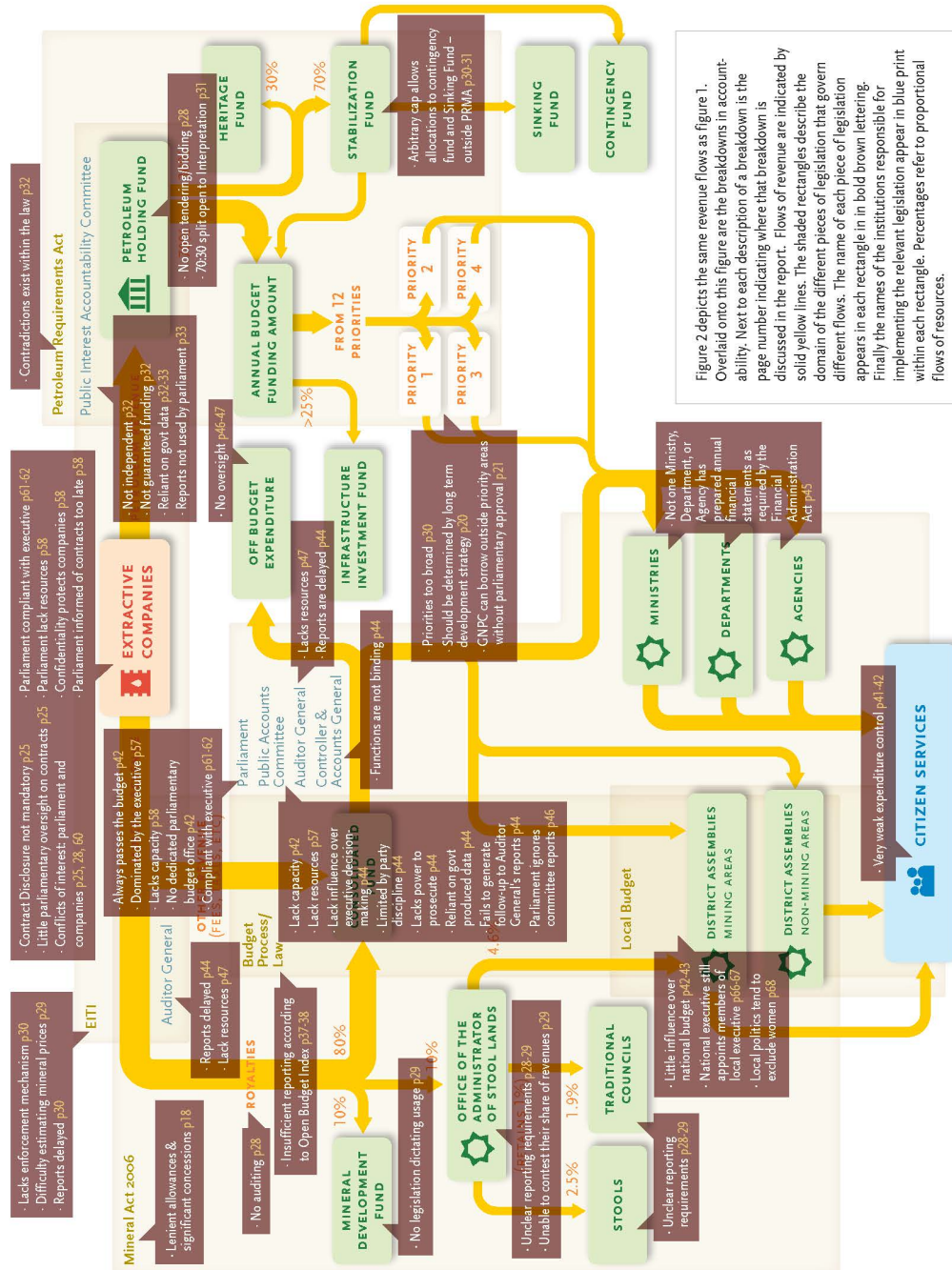


Figure 2 depicts the same revenue flows as figure 1. Overlaid onto this figure are the breakdowns in accountability. Next to each description of a breakdown is the page number indicating where that breakdown is discussed in the report. Flows of revenue are indicated by solid yellow lines. The shaded rectangles describe the domain of the different pieces of legislation that govern different flows. The name of each piece of legislation appears in each rectangle in bold brown lettering. Finally the names of the institutions responsible for implementing the relevant legislation appear in blue print within each rectangle. Percentages refer to proportional flows of resources.

EXECUTIVE SUMMARY

Natural resource wealth in Ghana is significant and has the potential to make important inroads into addressing poverty in the country. Since 2000, however, the country's marked economic growth has not been matched by improvements in human development outcomes.

This research is inspired by the desire to arrest this trend by seeking out opportunities for civil society to improve revenue management. The focus of the work is on exploring the possibilities for (1) increasing the quantity of revenues that remain in Ghana as a result of the exploitation of the country's natural resources and (2) making sure that the revenues that flow from extractive industries are effectively allocated toward fighting poverty. To these ends, this report is focused on understanding the political economy of revenue-sharing agreements, budget processes, and oversight institutions in Ghana.

Ghana's natural resource wealth includes both established mining activity and a more nascent petroleum sector. Revenues from mining have few explicit conditions attached to them, with 80 percent of the revenues flowing into the Treasury's Consolidated Fund, while the remaining 20 percent flow, in some form, back to the area in which mining is taking place. Revenues from the petroleum sector are all specifically earmarked, so that 70 percent are used to support the budget, focusing on specific sectors. The remaining 30 percent of revenues are split between two funds, one focused on saving for future generations and one focused on smoothing price volatility.

Mining policy in Ghana is characterized by its reform under conditions of structural adjustment in which it was seen as a means to attract foreign investment and drive poverty reduction. The result is that the country offers numerous allowances and concessions to mining companies.

Accountability within both the mining and petroleum sectors is undermined by the extent to which decision-making is dominated by the executive branch of government. This dominance persists in the petroleum sector despite the fact that petroleum revenues are governed by specific, purpose-built legislation intended to improve accountability. Problems include legislation (namely, the Petroleum Revenue Management Act) that affords the executive branch too much discretionary power, and an oversight body (the Public Interest and

Accountability Committee) that has historically been compromised by lack of resources and authority, and that also generally lacks support from Parliament.

Because 80 percent of mining revenues in Ghana enter the central budget, understanding revenue management in the country requires some understanding of the budget process. On paper, Ghana's budget process seems controlled, consultative, and robust. In practice, however, it is compromised by significant levels of unpredictability regarding revenue flows (both from aid and from natural resources), which result in the need for flexible budget procedures that make auditing a challenge. In this regard the annual audit of national accounts suffers from significant delays. In addition, although Parliament has to approve the annual budget as well as any amendments, Parliament is, on the whole, thought to be incapable of performing this role because it lacks both the capacity and necessary incentives. The result is that the process of budget priority setting is dominated by the executive branch, and few effective controls exist to oversee expenditure—leading to significant overspending, especially during election periods.

Overall, the process of allocating revenues from extractive industries—whether they be mining revenues directed through the budget or petroleum revenues directed through the Petroleum Revenue Management Act (PRMA)—is dominated by the executive. In the case of the budget, the executive dominates in that formal allowances empower the Ministry of Finance and Economic Planning¹ (MFEP) to determine budget ceilings and arbitrate over ministerial budgets. In the case of the PRMA, the dominance of the executive is due to contradictions in the act, as well as formal discretionary allowances afforded to the executive. In this context, an excessively broad list of priority sectors and weak oversight combine to afford the executive significant control over where to invest revenues.

Despite formal efforts at decentralization in Ghana intended to empower local government, the power of the executive branch has been maintained via its ability to appoint a significant number of local government executive officials. In this context, the accountability of these individuals tends to be directed toward those who appointed them rather than toward the constituents they are meant to serve.

Given high levels of executive control, weak oversight, and significant discretion, accountability within the system is removed from the formal sphere into the realm of informal politics, where it is generally oriented upward. Individual decision-makers (who act both to sign contracts with extractive companies and to allocate revenues) become answerable to their peers rather than to the public. As a

¹ Also referred to as the 'Ministry of Finance' (MoF). The two names are used interchangeably in this report. An effort has been made to refer to these institutions in the same way that the source material did so.

consequence, decision-making is rendered subject to an internal dynamic based on favors owed and given between individuals within the political class.

Problems of accountability within the extractive sector in Ghana cannot be divorced from broader accountability challenges in the country. In this regard, the general dynamic of a powerful executive branch and compliant Parliament is particularly noticeable. Such problems are made worse by the fact that the majority of oversight institutions lack prosecutorial authority and thus rely on Parliament to pursue, redress, or take up recommendations.

The persistent weakness on the part of Parliament to hold the executive branch to account—or to force it to exercise restraint—is multifaceted. On the one hand, it reflects a strong culture of party discipline driven by a political cultural psyche of reverence to authority and to older, “Big Men.” On the other hand, systematically skewed incentives play an important role. Regarding the latter, it is notable that elections for parliamentary positions are decided through a system of closed party-lists that are first determined by primary elections. The primary process allows for vetting (and thereby sanction) of candidates that the party-executive does not support. In addition, because elections in rural areas are characterized by patronage spending and vote buying, a successful election depends on good connections, loyalty to senior figures, and the ability to generate funding, as well as on securing support within the party more generally. Such alliances and obligations are carried into and reproduced in Parliament, where party loyalty translates into support for government agendas and the negation of any executive oversight mechanisms.

Such conditions present a challenging context for civil society organizations seeking to improve revenue management. Efforts at improving institutional oversight have seen some significant success, including Ghana joining the Extractive Industries Transparency Initiative (EITI) and the creation of the Public Interest and Accountability Committee (PIAC) as an oversight body for the management of petroleum revenues. Despite these steps, however, the overall effectiveness of these bodies in terms of improving accountability of revenues management has been somewhat disappointing. Regarding civil society efforts to drive investments into specific pro-poor sectors, successes have been even more limited, with budget allocations generally not reflecting the priorities of civil society. Finally, the efforts of civil society to audit the state have been mixed: there have been some successes monitoring macro-scale budget transfers, but also significant frustration in trying to monitor local-level expenditures.

A notable feature of audit efforts in Ghana is that they reveal a systematic dysfunction of oversight institutions. This dysfunction likely reflects the fact that the incentives for maladministration remain in place regardless of the increased threat of audit and sanction from civil society. As such, much work remains to be done in terms of addressing the power imbalance between the executive and

other branches of government. One important means for achieving this rebalancing could be through efforts to politicize the function of good governance institutions in order to strengthen them by reorienting the incentives of officeholders toward accountability to citizens—rather than to the individuals who appoint them.

ACRONYMS AND ABBREVIATIONS USED IN THIS REPORT

ABFA	Annual Budget Funding Amount
ACEP	Africa Centre for Energy Policy
APT	Additional profit tax
CAGD	Controller and Accountant General's Department
CDD-Ghana	Ghana Centre for Democratic Development
CJA	Committee for Joint Action
CSO	Civil society organization
CSPOG	Civil Society Platform on Oil and Gas
DCE	District chief executive
EITI	Extractive Industries Transparency Initiative
GEITI	Ghana Extractive Industries Transparency Initiative
GNPC	Ghana National Petroleum Corporation
GSFP	Ghana School Feeding Programme
IEA	Institute for Economic Affairs
IFPRI	International Food Policy Research Institute
ISODEC	Integrated Social Development Center
MDA	Ministry, department, and agency

MDTF	Multi-Donor Trust Fund
MFEP	Ministry of Finance and Economic Planning
MoF	Ministry of Finance
MLGRD	Ministry of Local Government and Rural Development
MP	Member of Parliament
NDC	National Democratic Congress
NPP	New Patriotic Party
OECD	Organization for Economic Cooperation and Development
PAC	Public Accounts Committee
PBB	Program-based budgeting
PIAC	Public Interest and Accountability Committee
PNDC Law 84	Petroleum (Exploration and Production) Law
PRMA	Petroleum Revenue Management Act
PUFMARP	Public Financial Management Reform Program

This report was commissioned by Oxfam America and was researched and written by Paul Stacey at the University of Copenhagen.

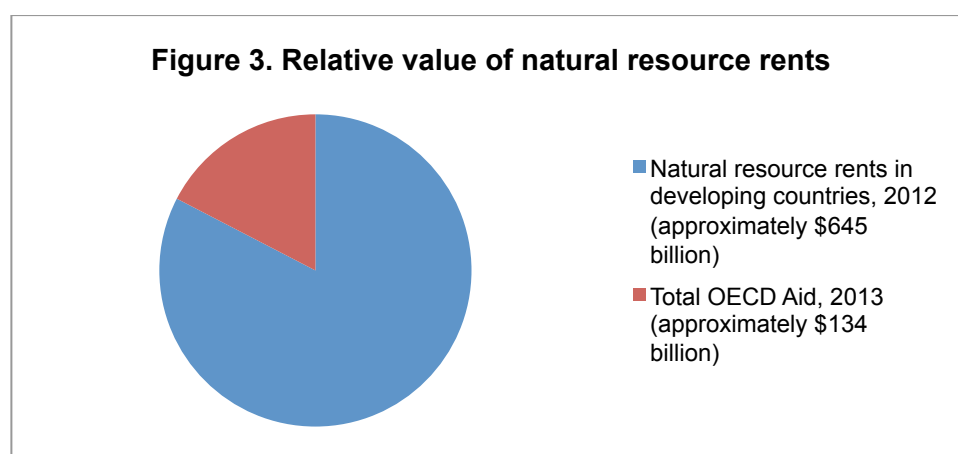
The report forms part of a larger study funded by the Bill & Melinda Gates Foundation to examine the role of local institutions in the management of extractive industry revenues.

The report was commissioned with the intention of creating a space for critical reflection on the part of Oxfam America regarding Oxfam's engagement with efforts to improve natural resource management through empowering citizens to hold their governments to account. The views expressed in this report do not represent the formal views of Oxfam America.

Oxfam would like to thank Albert Kan-Daapah and Edward Ampratwum, for reviewing early drafts of this work and providing useful input.

1. INTRODUCTION

Natural resources present a potentially significant opportunity for developing countries. In 2013, for example, it is estimated that the 85 least developed countries in the world produced mineral, oil, and gas commodities (or resource rents²) worth a total of \$645 billion—more than 4.5 times the Organization for Economic Cooperation and Development’s official development assistance³ for the same year (Figure 3). Despite such potential wealth, however, many resource-rich countries persist in a “paradox of plenty,” whereby, despite this wealth, the majority of their citizens eke out their lives in conditions of gross material poverty. Strikingly, many of the countries that experience the most dramatic forms of this paradox are also mired in corruption.



Source: World Bank and OECD⁴.

This report is part of a broader study looking at the national-level (‘local’) accountability systems, and the institutions that comprise them, across four countries: Senegal, Ghana, Tanzania, and Peru. These four countries represent a mix of socioeconomic and political conditions, and cover a range of levels of maturity in terms of the extent to which extractive industries are established. Of the four countries, Ghana’s extractive sector, with long-standing mining and

² Resource rents are calculated as the price of commodities, multiplied by production values, less

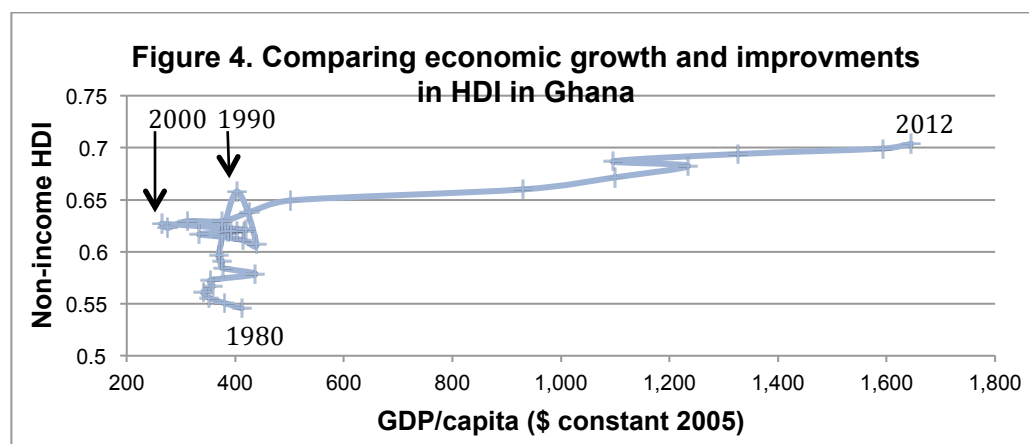
³ This total includes aid flowing to many countries in addition to those 85. Note that all dollar amounts noted in this report are US dollars.

⁴ Author calculations. OECD: <http://www.oecd.org/newsroom/aid-to-developing-countries-rebounds-in-2013-to-reach-an-all-time-high.htm>, World Bank: <http://data.worldbank.org/indicator/NY.GDP.TOTL.RT.ZS> & <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

relatively new oil and gas production, is considered the second most mature, behind Peru.

Ghana is a country that falls squarely into the category of relative resource wealth. It is the second largest gold producer in Africa and eighth largest globally. Likewise the discovery of the Jubilee in Ghana's waters, in 2007, constituted the largest off-shore discovery in West Africa over the last decade⁵. In this respect Ghana is characterized by high levels of resource dependence, with oil and mining together accounting for 66% of the country's exports, and high levels of resource abundance – in 2013 rents from oil, gas, and mineral production in Ghana were estimated to be worth \$8.5 billion.⁶ Yet at the same time (2012), 6.1 million people are estimated to live in absolute poverty in the country.⁷

In such a context it is clear that access to extractive resources has the potential to finance important improvements in human well-being. Simultaneously, however, access to these resources creates the risk of Ghana entering the paradoxical state of having abundant natural resource wealth while many Ghanaian citizens persist in poverty. In this regard, looking at the relationship between human development and economic growth, a worrying trend emerges: significant economic growth since 2000 not being matched by improvements in education and health (Figure 4 – each check-mark on the line represents a year, 1980, 1990, 2000 and 2012 are highlighted).



Source: World Bank and United Nations Development Program⁸.

⁵ EITI Ghana: <https://eiti.org/Ghana>

⁶ Note that this \$8.5 billion figure is not the amount of money received by the Ghanaian government in 2013; rather, it is an estimate of the total value of resources (the resource rents). The figure uses World Bank data and is based on a calculation of the production of commodities, multiplied by their price, less an estimate of a "normal return on capital." World Bank 2011. *World Development Indicators*, see pp 187.

⁷ World Bank poverty data: <http://data.worldbank.org/indicator/SI.POV.NAHC> and population data: <http://data.worldbank.org/indicator/SP.POP.TOTL>

⁸ World Bank data: <http://data.worldbank.org/indicator/NY.GDP.PCAP.KD>. UNDP data made available to the author on request.

In light of these findings, this research is concerned with understanding how to ensure that the wealth from extractive industries is channeled into investments that reduce poverty. The motivation for this research comes from the desire to achieve three objectives:

1. Increase the proportion of revenues from extractive industries that remain in the country in which those resources are located.
2. Increase the proportion of those revenues being allocated to the sorts of pro-poor investments that will best address human development.
3. Make sure that the money that is allocated for expenditure in the budget actually corresponds to real resource transfers and reaches those points of expenditure for which it is intended.

To these ends, this report focuses on (1) understanding how rules for revenue collection from extractives industries are set and (2) understanding how budget spending is prioritized. In the case of the former, the intention is to identify opportunities to increase the proportion of revenues being retained by the state. In the case of the latter, it is to understand how budget priorities might be influenced so that an increased portion of extractive industry revenues are spent on goods and services that are accessed by poor, rural agriculturalists and that have been shown to yield the greatest returns in terms of poverty reduction.⁹

Increasing the revenue collected by developing countries and better orienting it toward expenditure that meets human development goals are, however, only part of the challenge. It is also critical that legislation is followed and that budgets are effectively executed. Thus, this work is also concerned with (3) understanding the extent to which decision-makers in Ghana can be considered accountable (or not) and identifying the dynamics that shape that accountability (or the lack thereof). This focus constitutes the title of the work -

Even as an emerging middle-income African liberal democracy, Ghana remains dependent on the export of raw materials for foreign currency. As a result, the country is vulnerable to the vagaries of world markets for cocoa, gold, and now oil.¹⁰ Revenue from the extractives sector constitutes some 12 percent of total public revenue in Ghana. Total revenue and grants, including oil, for the 2015 budget are estimated at 24 percent of GDP. From 1993 to 2002, Ghana's revenue from mining accounted for about 10 percent of taxes, but in some years it reached up to 17 percent.

⁹ Food and Agriculture Organization (FAO), *The State of Food and Agriculture 2013: Food Systems for Better Nutrition* (2013).

¹⁰ These three commodities alone provided for 78.3 percent of total export earnings in 2013. Tony Dogbe, *Follow the Money: Ghana Scoping Study* (International Budget Partnership [IBP], 2014), 8.

The domestic political-economic context is defined by a relatively weak civil society, the dominance of two political parties, a powerful executive branch, and centralized control over the extractive sector and other economic resources. Contemporary governance of the extractive industry sector has been characterized by the liberalization of the economy based on free-market reforms that have been implemented over the past 30 years. Together, these features have shaped a configuration of extractive industry governance that features strong institutional disincentives and capacity challenges that work against both horizontal and vertical accountability.

This report is divided into eight further sections. Section 2 briefly discusses the methods and conceptual framing used in the work. Section 3 describes the technical procedures surrounding revenue sharing from extractive industries, including a discussion of how these laws and policies came to be and any major failings in the accountability system regarding natural resource revenue management. Section 4 describes the budget process in technical terms, as well as the institutional failings within it. Section 5 explores where decision-making influence lies in the process of allocating revenues either through the earmarking process or via the budget process. Section 6 seeks to link institutional failings within the budget process and revenue management policy to failings within the broader accountability ecosystem in the country. To do so, Section 6 details how accountability institutions are meant to function, how they actually function, what the implications of their failure are, and how they have been able to resist reform. Turning from how power is manifest at a central level, Section 7 briefly describes the extent to which power has been effectively decentralized in the country. Finally, section 8 presents an overview of opportunities for civil society to influence budget priorities and drive accountability. Section 9 provides a brief conclusion.

2. METHODS AND CONCEPTUAL FRAMINGS

To address the imperatives of this project, this research employed several different methodologies. Given that a core framing of the research was that accountability is not simply the outcome of rules but also the outcome of power relations,¹¹ a major focus of the work was on documenting differences between what is meant to happen and what actually happens, and then explaining variances. Because the focus of this work was on how revenues are collected and how they are allocated, focus was placed on the laws and policies defining revenue collection and those defining the budget process. To account for the fact that power matters in establishing rules, to whatever extent was possible effort was also dedicated to explaining the political and economic contexts that shaped the rules governing revenue-sharing policies and the budget.

The report is based on qualitative data collection techniques over a five-month period: a desk based study of published and unpublished materials; 19 semistructured interviews with senior political figures, senior civil servants, academics, and extractive industry experts; and numerous informal conversations with a range of stakeholders. The interviews and conversations, listed in the Appendix, were carried out in Accra over four journeys totaling eight weeks, from December 2014 to April 2015.

Secondary sources studied included publicly available material in books, journals, and articles that focused on making known, in a broad sense (1) existing knowledge of contemporary budgetary processes, (2) rule-making processes related to the use of EI revenue, (3) the actors and institutions involved in these processes, and (4) formal and informal mechanisms of checks and balances of the processes. It was very useful to supplement this body of literature with media sources, including Ghanaian daily newspapers and their online archives, focusing on current political and public debates concerning the budget, cases of maladministration, and the governance and usage of EI revenue.

¹¹ Jonathan A. Fox, *Accountability Politics: Power and Voice in Rural Mexico* (Oxford University Press, 2007).

The secondary written sources also consisted of a wealth of unpublished gray literature (such as conference articles and papers, governmental and nongovernmental reports) either available online or accessed privately or directly from a variety of institutions and organizations. The bulk of the unpublished data was formal state law explicitly related to extractive industries, budgetary processes, and accountability. (The “References” section of this report provides an overview of relevant formal state law.)

Interviews with past and present members of Parliament (MPs), ministers, civil servants, and civil society stakeholders provided valuable insight into rule-making and rule-following processes. Nevertheless, government sources were, expectedly, more useful in revealing how the government wanted to portray itself than in documenting how rules are applied and followed. Conversely, former holders of high positions, opposition MPs, and others on the periphery of decision-making (such as MPs from rural constituencies and representatives from think tanks) were more candid about how things did not work—showing clearly the importance of collecting data from as many different angles and interests as possible in order to gain a satisfactory overview of the process of governance.

Interview questions aimed to uncover central features of the rule-making process to make known the role of actors in different positions of power, and to understand the relations between them. While exploring what is supposed to happen, an important goal was to unravel what else is happening while what is supposed to happen is not happening. What stood out from all the interviews with the various stakeholders was that the formal rules of budgeting and extractive industry governance were only part of the game, which at times either dominated, or was dominated by, a range of other interests within the public sector.

To explore the role of citizen groups in accountability, the work also analyzed the capacity for civil society to oversee budget and revenue-sharing processes and to leverage moments of maladministration in order to initiate some form of sanction. This analysis included surveying members of civil society regarding what they thought were the major impediments to achieving accountability. Unfortunately, only six surveys were completed in full (a response rate of 27 percent¹²); only the questions that received a significant number of responses have been incorporated into this study. In addition, the research involved a review of all the known projects that have sought to “follow the money” by reconciling budget allocations with receipts at the point of service delivery.

¹² Although this is a low number of responses, part of this is a function of only having a relatively small number of possible respondents. In this regard, outcomes of this survey should be viewed as the formal responses of 6 members of civil society.

Methodological challenges in the work pertained to the fact that a feature of studying the rules of extractive industry governance and budgetary processes is that they are debated in real time, and that respondents will want to protect their own interests and satisfy the researcher. This situation poses a unique set of challenges. Simplified, the task is comparable to that of a sports commentator who wants to understand the rules of a particular game while the players actively choose and define different sets of rules depending on positions and preferences. To the observer, the different “rules” can appear complementary, contested, or contradictory. This outcome is magnified in the context of Ghana’s current embryonic legal framework covering the oil/gas/petroleum sector. Some elements were hastily written, others are now under review, others appear to have been ignored, and others are the subjects of litigation. Thus, answers to questions such as “What are the rules?” depend on whom one is talking to. As a result the work had to focus on contestable and emerging relations between sets of actors, groups, and stakeholder interests.

In a practical sense, the biggest challenge of the interview process was the time-consuming and often frustrating task of gaining access to informants and of obtaining accurate details of the contacts who were targeted for interviews, the scheduling of appointments for interviews, and the last-minute cancellation of appointments by respondents. Often, such changes meant being directed to someone who turned out to be inappropriate or who lacked the knowledge to answer our questions. Journeys were sometimes wasted, and the team had to make do interviewing someone who was not originally intended.

Literature and documentation pertaining to petroleum revenue-sharing agreements and formal state law can be highly complex, and typically replete with the specialized nomenclature of the sector, parts of which are themselves open to multiple interpretations. This poses particular challenges when wanting to decipher underlying institutional imperatives that shape such agreements.

The identification, collection, collation, and scanning of the efforts of civil society organizations (CSOs) to “follow the money” was undertaken for seven full weeks by two Ghanaian Ph.D. students (Marshal Kala and Francis Jarawura) and a master’s degree student (Ben Asunki), working from and moving around Accra. Their work provided names and details of 22 relevant respondents for an online survey. The task of collecting reports proved more difficult and time-consuming than envisaged, and, similar to the findings of a 2014 International Budget Partnership report, the research assistants found that few CSOs and academics are undertaking noteworthy budgetary analysis—or following public revenue flows—in Ghana.¹³ This observation points to a lack of CSO expertise, to a lack of resources, and to difficulties in obtaining and cross-checking relevant data. Still, the Ghana research team could not be certain that the evidence of absence

¹³ Dogbe, *Follow the Money*, 12–22.

equated to an absence of evidence, and their search continued in earnest until the team was satisfied that all important leads were exhausted.

The collection of such studies posed many other challenges, including the need to visit organizations several times; a poor internet and mail culture on the part of organizations, which made communication difficult; a low standard of internet cafes that made printing and scanning trying, time-consuming, and expensive; a lack of office space and resources for research assistants; frustrations over almost daily power cuts in Accra; a large number of unanswered and unreturned telephone calls; uncertainty on the part of staff at organizations as to what studies their institutions had participated in; frequent problems of institutions being unable to locate studies and reports; a general lack of electronic copies of past and present reports authored by CSOs; uncertainty or no knowledge as to the location of past reports of potential interest; and a lack of quality studies and secondary literature on these studies. It is significant to note that the dearth of useful data was not only based on what can be termed CSO capacity issues; the team also experienced a lack of cooperation from leading donors such as the Netherlands government (through the Dutch Embassy in Accra) and leading audit firms such as PricewaterhouseCoopers (PwC)—both of which rejected the team's earnest and repeated requests to share audits they had either commissioned or authored.¹⁴ It seemed out of place that leading players at the professed forefront of transparency initiatives were unwilling to share data. Finally, it is relevant to note that the research assistants themselves had difficulties in recognizing and/or identifying relevant material (despite briefings and access to project documents) owing to the technical, detailed, and varied nature of relevant data, audits, and public financial management documents.

¹⁴ Both institutions denied us access: first, on the basis of confidentiality, and second, as a consequence of the requirement to have the permission of the authors of the audits before release. (Both institutions were unwilling or unable to supply the names of the authors to the team so that permission could be sought directly.)

3. REVENUE SHARING IN GHANA

This section of the report documents the technical details of how revenues are collected from the extractive sector in Ghana, including revenues from both mining and oil and gas. The section then reviews the political, economic, and social exigencies that shaped how these processes came to be established. Finally, the section discusses the oversight mechanisms that are meant to ensure that these processes are followed, before describing problems in this accountability architecture. Thus, the section looks at what is meant to happen, why rules were chosen, and what actually happens.

Prior to assessing the dynamics shaping revenue sharing within the Ghanaian extractives sector, it is worth noting the important structural features that shape agreements between companies and governments at a global level—and that limit negotiation. For example, mining is normally taxed at a significantly lesser rate than oil and gas projects because mining has lower margins, higher exploration and production costs, and higher risks than oil and gas production.¹⁵ Mining companies generally demand a higher rate of return (in other words, more favorable agreements) to justify investments, and they are normally the majority stakeholders. As a minority shareholder, governments have limited influence on mining boards.¹⁶ Globally, there tends to be a higher level of state involvement in oil projects, and historically, oil companies are more likely to have global consortium support or price support from cartels.

MINING REVENUES

Article 176 of the 1992 Ghanaian Constitution states that “(a) all revenues or other moneys raised or received for the purposes of, or on behalf of, the Government; and (b) any other moneys raised or received in trust for, or on behalf of, the Government” shall be deposited in the Consolidated Fund (Treasury). Revenues directed to the Consolidated Fund are available for general

¹⁵ In 2011, for example, ratios of copper mining costs to market price were around 1-to-3.5, while for oil ratios were roughly 1-to-16. See Paul Stevens, Jaakko Kooroshy, Glada Lahn, and Bernice Lee, *Conflict and Coexistence in the Extractive Industries*, Chatham House Report (Royal Institute of International Affairs, 2013).

¹⁶ Joseph Ayee, Tina Søreide, G.P. Shukla, and Tuan Minh Le, *Political Economy of the Mining Sector in Ghana*, Policy Research Working Paper 5730 (Public Sector Reform and Capacity Building Unit, Africa/World Bank, 2011), 15.

public expenditures through the budget. For mining, the revenue-sharing formula is as shown in Figure 1 (page 2).

The Mining and Minerals Act of 2006 specifies the royalties, rents, and fees that are to be collected from mining sector operators and channeled to the Consolidated Fund. From there, revenues are disbursed to all sectors through the central budget. The royalties directed to the Mineral Development Fund (see Figure 1 on page 2) aim to “compensate for any detrimental effects mining might have in their areas of operation and to support development in the local communities.”¹⁷ This amount is in addition to any other mining revenues that a region might otherwise receive.¹⁸

Besides royalties paid to the republic, there are other flows that go to the Consolidated Fund: (1) an annual mineral right fee, payable to the Minerals Commission, (2) corporate tax, (3) withholding taxes, (4) capital gain taxes as well as dividends and various licensing fees for reconnaissance, prospecting, and mining leases, (5) an application fee, and (6) an annual ground rent to the landowner.¹⁹ Dividends are a nontax source of government revenue, paid by mining leaseholders and collected by the Ministry of Finance and Economic Planning (MFEP). The government retains a 10 percent noncontributing share in every mining leaseholding, which can increase up to 30 percent. Finally, government revenue may take the form of voluntary, nonstatutory contributions that are largely tax deductible.

The Mining Commission serves to regulate all mining activities in Ghana. The Minerals and Mining Act of 2006 (Act 703) and the Internal Revenue Act of 2000 (Act 592) define tax rates and tax incentives to the mining sector and are of central relevance for understanding the rules of revenue collection. Ghanaian tax incentives (which affect revenue flows to the Consolidated Fund) are considered lenient; more than 800 items of mining assets are exempt from import taxes. Companies may enjoy double taxation reliefs (in cases where home countries have signed) as well as generous “carrying forward losses” that give capital allowances for property, plant, and machinery.²⁰ Act 703 stipulates that royalty rates range from 3–6 percent, although most companies paid the lower rate until

¹⁷ ICMM (International Council on Mining & Metals). Ghana Case Study. The challenge of mineral wealth: using resource endowments to foster sustainable development (2007:75).

¹⁸ Commonwealth Secretariat/International Council on Mining and Metals (ICMM), *Minerals Taxation Regimes: A Review of Issues and Challenges in Their Design and Application* (2009).

¹⁹ Thomas Akabzaa and Charles Ayamdoo, *Towards a Fair and Equitable Taxation for Sustainable Development Financing in Africa: A Study on Trends and Nature of Taxation in Ghana's Extractive Sector* (Draft Report for the Integrated Social Development Centre [ISODEC], 2009), 21.

²⁰ Akabzaa and Ayamdoo, *Towards a Fair and Equitable Taxation for Sustainable Development*, 28.

March 2011, after which a 5 percent flat rate was established.²¹ The apparent generosity of this regime is also evident in the fact that in 2004 only five out of nine companies paid dividends, and as of 2009 only one mining company paid capital gains tax.²² The formal rules for collecting revenue can, moreover, be defined by specific Stability and Development Agreements between the government and mineral leaseholders.²³ The MFEP can grant mining leaseholders permission to retain off-shore foreign exchange accounts in order to transfer capital, acquire property and inputs, and service debts, among other activities.²⁴

The above notwithstanding, it is important to realize that the popular view of mining contracts as generous as a result of these policies may be simplistic. Although the publicly known features of these contracts may appear the same (for example, a 5 percent royalty), contracts may also contain important confidential features that favor one party or another. As a contract expert explained:

It all depends on the nature of the contract and what you put in it. There are flexible provisions for review of contracts, or the regime, if there is a substantial change of circumstances. However, in questions of resource royalty, or what we call the fiscal regime, or elements of the take of government, there is the equity component, the royalty, the rent, and the charges. Here, much depends on provisions for excess profits. For certain cases, mineral companies can be right in saying that the price of the ore or the petroleum is low. But there are times when they get the bonus, and the question here is whether there are enough mechanisms that can trigger off an increase ... so that although you see modest priority levels in the agreement, if there is room for additional profit tax, then it means things can be properly adjusted to meet contingences. So the kind of rigidity we are

²¹ Alexander Kwame Archine, "Taxation and Revenue Management Challenges in Resources-Rich African Countries, Such as Ghana," *GREAT Insights* 2, no. 2 (2013). It is significant that there is no history of auditing large gold mining companies onsite, and state institutions are reliant on EI companies to forward figures on production, operations, capital costs, and cash flow, etc., from which royalty and tax rates are calculated. Ayee, Søreide, Shukla, and Le, *Political Economy of the Mining Sector in Ghana*.

²² Capital gains taxes are meant to be levied on mining property sold above book value. Akabzaa and Ayamdoo, *Towards a Fair and Equitable Taxation for Sustainable Development*, 25.

²³ These rules are meant to be subject to parliamentary approval.

²⁴ For example, a Newmont Ghana Limited agreement with the government of Ghana exempted the company from VAT on all imported items and on local- and foreign-purchased supplies, with a royalty rate of 3 percent (3.6 percent in the case of mining in forest reserves). Companies that invest more than \$500 million have a formal right to negotiate royalty and fee dues. Akabzaa and Ayamdoo, *Towards a Fair and Equitable Taxation for Sustainable Development*, 30.

talking about can be modified by the kind of provision, either by legislation or by negotiators.²⁵

OIL AND GAS REVENUES

In terms of oil and gas revenues, the 2011 Petroleum Revenue Management Act (PRMA, Act 815), defines central budget allocations and the rules on investments and savings from crude oil and petroleum, and provides for the financing of the national oil company. Before describing the PRMA, it should be noted that Act 815 was under review at the time of writing this report, and amendments to it were passed on July 31, 2015, in the Petroleum Revenue Management (Amendment) Act, known as Act 893²⁶. Timing prevented the amendments from being fully incorporated into this work, though footnotes or reflections have been added to the text where necessary to account for relevant changes. Thus, the analysis contained in this document pertains to Act 815.

The PRMA stipulates that 70 percent of oil and gas revenues should go to the Annual Budget Funding Amount (ABFA), with the remaining 30 percent going to the Ghana Petroleum Funds (PRMA, Section 19[1]). The contribution to the Annual Budget Funding Amount (ABFA) is intended to support the central budget against commodity fluctuations and secure long-term equity. The Ghana Petroleum Funds comprise two funds managed by the Ministry of Finance/Bank of Ghana through an operational management agreement: the Ghana Stabilization Fund receives 70 percent of the allocation, and the Ghana Heritage Fund, or Savings Fund, receives the remainder.

Regarding the Annual Budget Funding Amount (ABFA), Section 21(5) of Act 815 defines statutory limits and discretionary powers. Section 18(2) states that the amount “allocated annually to the Annual Budget Funding Amount shall be guided by a medium-term development strategy aligned with [an as-yet nonexistent] long term national development plan, absorptive capacity of the economy and the need for prudent macroeconomic management.” As Ghana did not have a long-term development plan when the law was made, Act 815 states:

[T]he budget shall give priority to, but not be limited to programmes or activities related to

- (a) agriculture and industry;
- (b) physical infrastructure and service delivery in education, science and technology;
- (c) potable water delivery and sanitation;

²⁵ Samuel K.B. Asante, former deputy attorney general, interview, January 14, 2015.

²⁶ For more details on the PRMA amendment act of 2015, Act 893, see Ghana’s Ministry of Finance website at <http://www.mofep.gov.gh/?q=reports/2015-08-12/petroleum-revenue-management-act-893-amendment-act-2015>.

- (d) infrastructure development in telecommunication, road, rail and port;
- (e) physical infrastructure and service delivery in health;
- (f) housing delivery;
- (g) environmental protection, sustainable utilization and protection of natural resources;
- (h) rural development;
- (i) developing alternative energy sources;
- (j) the strengthening of institutions of government concerned with governance and the maintenance of law and order;
- (k) public safety and security; and
- (l) provision of social welfare and the protection of the physically handicapped and disadvantaged citizens.²⁷

From these 12 areas, the Minister responsible for Finance is to prioritize a maximum of four that will be directed by the Medium Term Development Plan and reviewed every three years.

The law sets the terms by which transfers to the two Petroleum Funds are to take place.²⁸ In addition, amendments to the Act now stipulate that a maximum of 25 percent of the Annual Budget Funding Amount will be allocated for public investment expenditure through the Ghana Infrastructure Investment Fund (GIIF) for the purposes of infrastructure development.

The Petroleum Revenue Management Act demands that allocations of the AFBA be approved annually by the Parliament; however, the Ghana National Petroleum Corporation (GNPC) can, by law (PNDC Law 64), borrow without parliamentary approval to finance activities outside the programs approved by Parliament in line with Petroleum Revenue Management Act. Finally, the Petroleum Revenue Management Act prohibits statutory earmarking of petroleum revenues, meaning that funds cannot be allocated to affected communities.

²⁷ Africa Centre for Energy Policy (ACEP), *Three Years of Petroleum Management in Ghana: Transparency without Accountability*, Public Interest Report No. 2 (2014), 22. Worthy as they seem, these spending priorities belie the fact that basic functions of government (such as insuring public buildings) have not received adequate attention. That state assets have insufficient coverage came to light in January 2015 after a large warehouse fire gutted the Ghana Health Services Central Medical Store in the coastal city of Tema, resulting in an estimated uninsured loss to the state of \$90 million. (See Kwame Asare Boadu, "Central Medical Stores Fire Is National Catastrophe: President Mahama," *Daily Graphic*, January 15, 2015, <http://graphic.com.gh/news/general-news/37088-central-medical-stores-fire-is-national-catastrophe-president-mahama.html>.) It was later revealed that Ghana has no formalized insurance coverage for any emergency service personnel.

²⁸ At the end of 2013, the Ghana Petroleum Funds' balance was \$609.9 million. ACEP 2014:1

UNDERSTANDING REVENUE SHARING IN GHANA

The management of extractive industry revenues in Ghana has two key characteristics:

1. Significant executive dominance over decision-making
2. Relatively generous terms for extractive companies, most notably within the mining sector

Executive dominance over extractive industry lawmaking is reflected in the Minerals Commission Act of 1993 (Act 450), in which the Office of the President is given exclusive authority to appoint all members of the Mining Commission. This arrangement continues a history of domestic governance of extractive industries being the prerogative of the executive along with experts appointed by the executive. This prerogative is particularly acute regarding mining: control over minerals was established as far back as the colonial period. This feature has survived numerous constitutions up to the present, and the majority of MPs (besides those from mining constituencies) do not oversee or influence policymaking regarding extractives.²⁹

Regarding the geographical distribution of resources to the local level, the dominant role of the executive likewise remains apparent through, for example, the very modest flows of royalties to traditional authorities (Figure 1).³⁰ The small size of these payments reflects the state's largely symbolic recognition of chiefs, and the institution of stools, as custodians of the land. The payment is not suggestive of the state recognizing chiefs' right to accrue a meaningful source of income from extractive activity (Section 6).³¹ This practice in turn reflects a long-term political consensus that rights should be vested in the state rather than in individuals or stools.³²

Explaining Ghana's apparently generous terms by which extractive industries can operate requires a brief reflection on the economic history of the country. In this

²⁹ E. Kojo Sakyi, Richardson Azunu, and Kwasi Addei Mensah, "Legislator Views on Knowledge and Capacity Challenges in Extractive Sector Policymaking and Governance in Ghana," *International Journal of Politics and Good Governance* 1, no. 1.2 (2010). An MP responded that such issues are "best left to the experts" (interview, January 17, 2015).

³⁰ These numbers are calculated from the Minerals and Mining Amendment Act 794, (2010) which amended the Minerals and Mining Act 703 of 2006. Now, mining companies pay a flat rate of 5 percent of royalties. In 2011, this amounted to 14 percent of the Ghana's internal revenue. For figures, see André Standing and Gavin Hilson, *Distributing Mining Wealth to Communities in Ghana: Addressing Problems of Elite Capture and Political Corruption*, U4 Issue, no. 5 (2013).

³¹ Despite this conclusion, it can be argued that formal acknowledgment of traditional leaders, superficial as it may be, offers grounds for furthering the case that mineral wealth should accrue to a greater extent to the populations living in the areas from which it is extracted.

³² Asante, interview.

regard, a major change in the governance of extractive industries occurred with the opening of the Ghanaian economy from 1983 after the adoption of structural adjustment programming, supported by both international financial institutions and major multilateral donors in the wake of a failure of import substitution and state-driven policies. A domestic economic crisis, coupled with a political environment characterized by a revolutionary spirit and political populism, enabled the military regime of Jerry Rawlings (Ghana's president from 1993 to 2001) to make a case for international aid packages and donor accommodation. Thus, Ghana embraced a cocktail of economic structural adjustment programming and was directed toward market-driven growth through privatization, denationalization, and the liberalization of state-owned enterprises. Domestic support for this process came from the Governing Council and the Provisional National Defense Council, as well as business leaders, entrepreneurs, and traditional authorities.³³

For the mining sector, these reforms had significant impacts. In 1986 the mining sector was reformed, and the first wave of liberalization led to the issuing of more than 55 gold prospecting licenses between 1986 and 1989.³⁴ The 1986 Mining Law was further reviewed in 2000–2001 as part of an effort to comply with World Bank best international practices that were motivated by the professed benefits of deregulation and liberalization as a means to attract foreign investment into the sector. The review materialized as the 2006 Minerals and Mining Act (Act 703), a complex 60-page document.³⁵ This process marked a distinct shift from government's role as a relatively protective owner and operator of mines to one in which the government's focus was on administration and regulation.

The change in mining governance from the mid-1980s up to 2006 was consequently in the direction of less state control toward a liberal regime attractive to companies and the private investor. As mentioned, this shift included lowering the royalty rate from between 3 percent and 12 percent in 1986 to between 3 and 6 percent in 2006. The liberal markings on the regime are also evident in the fact that, in 2004, only five out of nine companies paid dividends, and, as noted, as of 2009 only one mining company paid capital gains tax in Ghana.³⁶

Following a combination of high gold prices and the 2008 global financial crisis, the incumbent National Democratic Congress (NDC) government established a

³³ For an excellent analysis of this process, see Paul Nugent, *Big Men, Small Boys and Politics in Ghana: Power, Ideology and the Burden of History, 1982–1994* (Pinter, 1995), chapter 3.

³⁴ Ayee, Søreide, Shukla, and Le, *Political Economy of the Mining Sector in Ghana*, 10.

³⁵ Akabzaa and Ayamdoo, *Towards a Fair and Equitable Taxation for Sustainable Development*, 18.

³⁶ Capital gains taxes are meant to be levied on mining property sold off above book value. Akabzaa and Ayamdoo, *Towards a Fair and Equitable Taxation for Sustainable Development*, 25.

commission to review international revenue-sharing agreements, with a view to increase revenue and control for the state. The review is based on an acknowledgment that agreements undertaken by the previous New Patriotic Party (NPP) government (2001–2009) in its effort to gain advantages over competitors and attract investment had been lenient and company-friendly. The main challenge for the review committee is to improve on relatively state-unfavorable stabilization agreements, which were written by different interests in past contexts.

The current review committee is made up of extractive industry experts across political parties, civil society, and ministries. The basis for the commission is that agreements perceived as unfavorable were already in place when the 2006 mining law was passed. Notably, the drive for reform came partly from mining companies themselves. Asked about the background for the ongoing renegotiations of revenue-sharing agreements, an expert in extractive industry governance and member of the current review committee explained:

There had been no new mines at all almost since the '30s, but with [the] SAP [structural adjustment program] they all started to come in. ... [T]here was a push to get a new mining law, and the agreements that were made were made in 2003, and the law was passed in 2006. So when the law was passed, those agreements had already been made and the terms were different, so there was a demand to change it, but a very gentle demand. The turning point since came in 2009, when the mineral price was right up, and so the Newmont president met our president [Ghanaian President John Mills], who raised the matter. So it was the mining companies themselves that were ready to take a look and were ready to discuss it. So it wasn't pressure from the general population as such. It was a willingness of a company to open discussions. *It wasn't forced on them.* Once we began talking, the price of minerals went down quite dramatically ... both the demand to change, and the preparedness to accept the demand, came from both sides.³⁷

The institutional arrangements governing revenue management from oil differ from those of mining, mainly because the mining sector was reformed during a period of structural adjustment while oil was only discovered in 2007, and civil society was significantly engaged in the process of drafting legislation. In this regard, with the discovery of oil, a rich configuration of more than 100 civil society groups, experts, think tanks, community-based organizations, and NGOs found cross-party backing and created the Civil Society Platform on Oil and Gas (CSPOG) as a means to pressure the government to improve the existing set of petroleum-related laws. The platform received support from the Revenue Watch Institute, the World Bank, and Oxfam America to boost knowledge-sharing

³⁷ Former minister, expert on EI issues, member of review committee, interview, January 22, 2015.

capabilities and technical capacity. CSPOG experienced significant success and managed to influence the release of draft acts by government, thereby creating space for public feedback.³⁸ Following its holding of a “citizens’ summit,” a series of well-defined recommendations were formulated that aimed to improve the management of oil and gas revenues, local participation, and accountability and transparency mechanisms. As such, the lawmaking process was particularly transparent and participatory with ministerially initiated public meetings, forums, and media debates.³⁹

The platform’s influence was reflected in specific provisions in the Petroleum Revenue Management Act (PRMA), passed by Parliament in 2011. These pertained to:

- The transfer of petroleum receipts from the Bank of Ghana to government
- The compulsory annual transfer of 30 percent of revenue to separate funds
- The obligation of the MFEP to produce quarterly reports of receipts and expenditure
- Provisions for the multiple auditing of petroleum accounts
- The establishment of the Public Interest and Accountability Committee (PIAC) and defining its composition
- The cessation of the Petroleum Exploration and Production Bill
- The creation of the Petroleum Commission⁴⁰ through the Petroleum Commission Act

Particularly, the setting up of the Public Interest and Accountability Committee (PIAC) shows government bowing to pressure from civil society; both Parliament and government were initially opposed to the creation of the committee. Although the success of creating such an oversight institution in trying contexts is notable, the impacts of PIAC on improving accountability have unfortunately been limited (see below for details). The committee’s institutional weakness demonstrates that it was mainly the result of civil society pressure and was not envisaged or wanted by government as a strong and functional accountability mechanism. It remains to be seen whether civil society organizations can build on their early successes to improve the functionality of PIAC.

³⁸ Emmanuel Gyimah-Boadi and H. Kwasi Prempeh, “Oil, Politics, and Ghana’s Democracy,” *Journal of Democracy* 23, no. 3 (2012): 94–108.

³⁹ Gyimah-Boadi and Prempeh, “Oil, Politics, and Ghana’s Democracy,” 99.

⁴⁰ The platform influenced Parliament to not reserve a position on the commission for the Ghana National Petroleum Corporation (GNPC) owing to alleged conflicts of interest between the roles of regulator and commercial entity. See Gyimah-Boadi and Prempeh, “Oil, Politics, and Ghana’s Democracy.”

The impacts of civil society can also be seen elsewhere in the management of the oil sector. Specifically, high oil prices (spiking in 2008) inspired pressure from CSOs to lever government to include capital gains tax in agreements with the Amni International Petroleum Development Company and CAMAC Energy Incorporated.⁴¹

Notable in this account of the extractive sector in Ghana is the difference between the mining and the oil and gas sectors, with the latter having far greater provisions for transparency and (at least on paper) accountability. The differences between the oil and gas sector are explained in the following quote from an interviewee:

There is much more public consciousness in the petroleum sector than the mining sector. Therefore, there are much more corrective activities in petroleum than in mining, so they are not the same. Two things: One is that the hard mineral sector is older, established, and therefore we are trying to correct what it is. But the petroleum was new, so the CSO pressure came in at the beginning, and we actually got legislation powers which were partly domestic pressure, but also international practice. So now there are laws in place in the petroleum sector to monitor.⁴²

It is worth noting that the influence of civil society has not always been as effective in Ghana as it is today. For example, there were cross-party efforts to increase the accountability of the extractive sector at the time of the drafting of the 1992 constitution. Here, a configuration of interests advised that all extractive industry agreements be subject, as early as possible, to a Public Agreements Review Committee, which would be an interministerial committee providing reviews and oversight prior to Cabinet finalization and parliamentary ratification. However, the suggestion did not have sufficient executive branch support at the time, and it was subsequently dropped.⁴³ The result, today, is that by the time extractive contracts get to Parliament, it is too late to make changes— notwithstanding the fact that Parliament itself is not the ideal plenum for debating the technicalities of such agreements. Thus, a relatively high level of discretionary power continues today, in part a consequence of the executive branch's unwillingness to curtail its own discretionary powers.

With a sense of both the laws governing extractive industries and the factors that shaped those laws, a necessary next step is an attempt to understand the extent to which those laws are followed (or not). The next section turns to an

⁴¹ Extractive industries (EI) expert, member of mining review commission, interview, January 18, 2015.

⁴² EI expert, member of mining review commission, interview.

⁴³ Asante, interview.

examination of the specific oversight bodies created with the aim of ensuring accountability in the extractive sector.

ACCOUNTABILITY AND REVENUE SHARING

The Extractive Industries Transparency Initiative (EITI), created in 2002 with financial and technical assistance from the Multi-Donor Trust Fund (MDTF) and the World Bank Group, is often described as an important accountability mechanism. More accurately, however, it is a reconciliation body that seeks to marry government and company oil production and revenue figures and to identify discrepancies.⁴⁴ Ghana committed to join the EITI in 2003, became a candidate in 2007 and was designated compliant in 2010. Ghana EITI (GEITI) is voluntary and has a 23-member steering committee chaired by the Ministry of Finance and Economic Planning, with representatives from three CSOs, two mining companies, two businesses, local government, and an assortment of Ghanaian ministries, departments, and agencies.

In practice, GEITI has been successful in bringing attention to discrepancies between production and revenue data produced by government, on the one side, and PIAC and GEITI, on the other.⁴⁵ It has also generated guidelines regarding the share of mining royalties that are distributed to local governments. Finally, GEITI has had success in documenting that even in cases where corporate payments and government revenues match, it remains difficult to assess whether the lowest-level tiers of recipient institutions, such as traditional institutions, actually receive what is duly theirs.

PIAC, created in 2011 by the Petroleum Revenue Management Act as a response to pressure from civil society, has the tasks of ensuring compliance with the PRMA through (1) monitoring and evaluation, (2) providing space, as well as a platform for public debate, and (3) providing independent assessments on the management of petroleum revenues to the legislative and the executive branches of government. Despite the institutional weaknesses of PIAC, discussed in more detail below, it is worth noting that the institution has achieved some modest successes, even when working under difficult circumstances. These successes include the Salt Pond Oil Field being initially left out of revenue

⁴⁴ Akabzaa and Ayamdoo in *Towards a Fair and Equitable Taxation for Sustainable Development*, 57, define EITI as an accountability mechanism, while the Africa Centre for Energy Policy (ACEP), an African energy policy think tank and advisory body on mineral policy sees EITI as an institution designed to recognize quantitative divergences. The different understandings of EITI reveal misconceptions about the formal mandate of EITI as well as understandings of accountability.

⁴⁵ For example, GEITI highlighted divergences in reported crude oil lifting, Jubilee field royalties, carried and participating interest, the Annual Budget Funding Amount (ABFA), the Ghana National Petroleum Corporation (GNPC), and the Ghana Stabilization Fund. ACEP, *Three Years of Petroleum Management in Ghana*, 45.

reporting until PIAC identified the omission. PIAC's reports have also been circulated widely and spurred public discussion—including on the issue of how revenues are spent.

Despite these successes, problems persist in the management of the extractives sector. First, contract disclosure is not mandatory.⁴⁶ In addition, there is little oversight of agreements over mineral rights that are produced by technocrats for approval by the minister and subsequently Cabinet. Notably, such agreements are only subject to review by Parliament after it is too late to amend them.

In the case of the petroleum sector, contracts are initiated by the Ghana National Petroleum Corporation (GNPC). There is no practice of open tendering or bidding for licenses, and contracts are awarded through closed administrative processes. The Petroleum (Exploration and Production) Law (PNDC Law 84) does provide for copies of applications for petroleum agreements to be forwarded to a public agreements board.⁴⁷ However, the board was never made operational, and with the passing of the Petroleum Commission Act of 2011, the Petroleum Commission was given the responsibility to evaluate applications and petroleum agreements and to advise the Minister for Energy and Petroleum—rendering the role of the board null.

Concerns about undisclosed contracts are exacerbated by apparent conflicts of interest in the extractives sector. For example, members of Parliament sit on the boards of mining companies,⁴⁸ raising questions about companies' influence over government decisions related to mining, the rationale and formulation of particular agreements, and the role of politicians as owners, regulators, or investors in extractive industries.

Although there are legal provisions for allocating mining revenues to the local level, and although traditional authorities and institutions may receive various forms of revenue from mining, in practice royalties are not distributed to producing areas but held by government for redistribution through the Consolidated Fund. The system of auditing at this level is described as “weak or nonexistent.”⁴⁹ Consequently, the formal reporting obligations of stools and

⁴⁶ Mining contracts tend to be more confidential; contracts between governments and oil companies tend to be more accessible.

⁴⁷ Section 2(3) for example, states that “Copies of such an application shall be forwarded by the applicant to the National Energy Board, the Lands Commission, the Forestry Commission in cases where forest resources are to be affected by the petroleum operations envisaged, the Public Agreements Board and the Minerals Commission.”

⁴⁸ Ayee, Søreide, Shukla, and Le, *Political Economy of the Mining Sector in Ghana*.

⁴⁹ Ayee, Søreide, Shukla, and Le, *Political Economy of the Mining Sector in Ghana*, 18.

traditional councils concerning the use of mining revenue and its distribution from the Office of the Administrator for Stool Lands is unclear.⁵⁰

Uncertainty about royalty payments to the local level also affects accountability. Payments are justified more in terms of custom than legal right. This means chiefs do not have formal rights they can enforce to receive the relevant transfers, and further, they have little way of knowing how much they are entitled to or if a received amount is correct. Similarly, there is no legislation that dictates usage of the 10 percent royalties directed to the Mining Development Fund—which is intended to counter destructive environmental impacts.⁵¹

Regarding EITI, observers differ as to whether GEITI has actually impacted positively on the level of transparency related to oil revenue flows or not.⁵² Generally, most observers (including GEITI) recognize that significant, sector-wide institutional and structural challenges stand in the way of improving on the accountability of the extractive industries sector.⁵³ Concerning audits, there are challenges in:

- Assessing gold companies' daily bullion revenue because of changing spot prices and different sales contracts
- Evaluating the prices of particular minerals (for example, bauxite, diamonds, and manganese) as there are no established practices for making such evaluations available
- Obtaining an overview of hedged transactions owing to sector disinclination in revealing trade practices⁵⁴

⁵⁰ The process of revenue distribution to and between traditional authorities is also opaque. Matteo Morgandi, *Extractive Industries Revenues Distribution at the Sub-National Level: The Experience in Seven Resource-Rich Countries* (Revenue Watch Institute, 2008), 35, 41.

⁵¹ Morgandi, *Extractive Industries Revenue Distribution*, 38–42.

⁵² Akabzaa and Ayamdoo, in *Towards a Fair and Equitable Taxation for Sustainable Development*, 57, for example, write that there are “strong concerns about the level of transparency on revenue and contract agreements in the sector.” ACEP, meanwhile, asserts that there is greater transparency, based on an analysis of the 2011 and 2012 PIAC reports *inter alia*. See ACEP/Mohammed Amin Adam, John Peter Amewu, Abdulai Abanga, Benjamin Boakye, and Azara Salifu, *How a Good Law May Not Stop Oil Money from Going Down the Drain* (Oxfam America, 2013).

⁵³ Akabzaa and Ayamdoo, *Towards a Fair and Equitable Taxation for Sustainable Development*, 57; and ACEP, *Three Years of Petroleum Management in Ghana*. GEITI’s website explains its legal framework: “There is the need to review the present Mining Law or the legal framework to identify potential obstacles to EITI implementation and possibly codify and institutionalize EITI,” http://www.gheiti.gov.gh/site/index.php?option=com_content&view=article&id=84&Itemid=61.

⁵⁴ Akabzaa and Ayamdoo, *Towards a Fair and Equitable Taxation for Sustainable Development*, 57.

Moreover, as a voluntary, goodwill initiative, GEITI lacks powers of enforcement or prosecution, and therefore cannot enforce sanctions. As a final frustration, all of the annual reports of GEITI have been delayed in their production.

Act 815 (which determines allocations of oil revenues) is also thought to have weaknesses with the Minister of Finance enjoying too much leeway in deciding allocations to the different funds. Critics point out that the 12 priority areas, which are meant to guide the Annual Budget Funding Amount allocations, are too broad because almost any spending can be interpreted as coming under one area or another.⁵⁵ Despite the broadness of these categories, however, ministerial discretion has meant significant allocations have been outside the defined priority areas, for example, oil and gas revenues that are meant for the budget being consistently allocated to the ends of capitalizing the Ghana National Gas Company, in alleged contravention of Act 815. In addition, the Minister of Finance has, at times, placed a cap on revenue flows to the Stabilization Fund, which in turn redirects money to the Contingency Fund⁵⁶ instead, and which is not covered by the PRMA. From the Constitution (Article 177):

(1) There shall be paid into the Contingency Fund moneys voted for the purpose by Parliament; and advances may be made from that Fund which are authorised by the committee responsible for financial measures in Parliament whenever that committee is satisfied that there has arisen an urgent or unforeseen need for expenditure for which no other provision exists to meet the need.

(2) Where an advance is made from the Contingency Fund a supplementary estimate shall be presented as soon as possible to Parliament for the purpose of replacing the amount so advanced.

Opponents highlight that the practice of cap setting is not regulated and is “arbitrary,” being set by the minister responsible for finance (Article 23(3)) - allowing increased government spending and/or the redirection of revenue to debt service (in the form of the Sinking Fund – created in 2015 (Figure 1, page 2). While these are technically legal transfers by the Minister of Finance to nonpriority areas as defined in Act 815, they are reportedly difficult to account for

⁵⁵ Recommendations in this respect advocate for narrowing the focus to two specific areas of concern—agriculture and education—to make better use of ABFA revenue. See “Review of the Petroleum Revenue Management Act 2011 (Act 815): Proposals Presented to the Ministry of Finance and Economic Planning by the Africa Centre for Energy Policy (ACEP), the Center for Public Interest Law (CEPIL) and Friends of the Nation (FoN)” (2013), <http://www.aceplive.com/wp-content/uploads/2013/12/ATT00051.pdf>.

⁵⁶ This provision persists as Section 23(4) of Act 815, despite amendments implemented after this research had been completed.

and against the spirit of Act 815.⁵⁷ Similarly, opponents highlight that the Minister of Finance's "arbitrary" (re)allocation of revenues amounts to systematic contraventions of the discretionary powers of the Minister of Finance as constitutionally defined (Article 296).⁵⁸

Likewise, the governance of extractive industry revenue has experienced several cases of conflicting interpretations of the provision defining the terms of the 70-to-30 split between the Annual Budget Funding Amount and the Petroleum Funds, which in turn impacts on available allocations to the priorities. For example, in 2013, nearly \$70 million more was transferred from the Annual Budget Funding Amount (and consequently was not directed to the common fund), and was spent instead on debt service, than if the same interpretation of the provision and definition of "excess" that was used in 2012, was applied again in 2013. The allocation was passed by Parliament, and it demonstrated the ability of the executive branch to use discretionary power to interpret revenue flows to pursue particular agendas (in this case, servicing high-interest debt). A member of the Act 815 review committee explained ministerial discretion and the moving around of revenue as follows:

I was a member of the committee set up to review the proposals received by the government. I had so much confidence in what the committee was doing, but after it finished its work, it's like the recommendations have been put aside, and the minister [of finance] is doing his own things. For instance, there were no discussions *at any time* in the committee that 25 percent of the ABFA should go to the Ghana Infrastructure Fund. There was no deal ever discussed, but that is one of the amendments the minister is now seeking [decided] by the minister of finance ... the attempt was to project to the people of Ghana that there is an inclusive process of seeking the review of the law while indeed it is a solitary process ...

When questioned on what he thought the motivations for this might be, he replied:

My take is that the minister wants to take more of the money outside the strict transparency and accountability framework in order to have flexibility over its use. The transparency framework in the law is not the same [for the different funds] so if 25 percent of the ABFA goes there [to the Contingency Fund], it is governed by a different set of rules which do not have the same transparency framework as 815, and then the minister has leverage. ... [A]lso, our law, 815, provides for a ceiling on the Stabilization Fund, and the excess goes to the Contingency Fund or debt payment, so if the minister wants more money

⁵⁷ "Review of the Petroleum Revenue Management Act 2011 (Act 815): Proposals Presented to the Ministry of Finance and Economic Planning by the Africa Centre for Energy Policy (ACEP), the Center for Public Interest Law (CEPIL) and Friends of the Nation (FoN)."

⁵⁸ ACEP, *Three Years of Petroleum Management in Ghana*, 7.

outside the legal framework he puts a lower ceiling, which directs money to places that are not subject to strict rules. ... The Contingency Fund cannot be spent without parliamentary approval, and the finance committee in Parliament must always approve ... but [the composition of the committee means] they are always on the side of the ruling party, so his wishes will be adhered [to]. ... [I]t's an attempt to move revenues from places that are very strong to systems that are more flexible.⁵⁹

Finally, ministerial discretion, provided for by arbitrary caps and excessively broad terms for prioritizing investment, is enhanced by contradictions in Act 815, which actually make explicit allowances for discretionary revenue management and savings decisions. For example, Section 49 of the PRMA (Act 815), subsection 1, states that the “management of petroleum revenue and savings shall always be carried out with the highest internationally accepted standards of transparency and good governance,” but is inconsistent with subsection 3, which, in the name of protecting the petroleum funds’ performance, grants ministerial discretion in making decisions that are not subject to public or judicial review, nor bound by any obligation for disclosure.

Regarding PIAC’s specific weaknesses, it has suffered inefficiencies and is not strictly an independent body. In particular, until July 31, 2015, Act 815 made no provisions for its funding. This problem was addressed through amendments to the PRMA, which took place in 2015, after research for this report had been completed. Under the amended law, PIAC is to submit a budget to the Minister responsible for Finance, for inclusion in the national budget. Notably, while the resourcing is now meant to come out of the Annual Budget Funding Amount, the actual allowances for PIAC’s members remain the discretion of the minister.⁶⁰ It is yet to be seen whether this change will be significant for PIAC’s resourcing or performance.

Other than resource constraints, PIAC has, since its inception, had to rely heavily on government-produced data,⁶¹ which means that it cannot follow its mandate to

⁵⁹ Mohammed Amin Adam, executive director, ACEP, interview, April 9, 2015.

⁶⁰ See Amendment 13 of the Petroleum Revenue Management (Amendment) Act, 2015 (Act 893).

⁶¹ PIAC comprises 13 members appointed by the Ministry of Finance (1) a representative from an “independent policy research think tank,” (2) “a member to represent civil society,” and (3) “a member each nominated by the (i) Trade Union Congress, (ii) National House of Chiefs, (iii) Association of Queen Mothers, (iv) Association of Ghana Industries and Chamber of Commerce, (v) Ghana Journalists Association, (vi) Ghana Bar Association, (vii) Institute of Chartered Accountants, (viii) Ghana Extractive Industries Transparency Initiative; and (ix) Christian groups namely the National Catholic Secretariat, the Christian Council and the Ghana Pentecostal Council on a rotational basis, (x) the Federation of Muslim Councils and Ahmadiyya Mission on a rotational basis, and (xi) Ghana Academy of Arts and Sciences.” PRMA 815, Section 54 The principal enactment stated PIAC comprising “eleven members including” the above. This was amended in 2015 to “thirteen members comprising” the above.

undertake an “independent assessment” to make the process of revenue use accountable. The current chairman of PIAC, Major Daniel Sowa Ablorh-Quarcoo, has, since PIAC’s foundation, publicly lamented the lack of sufficient funds for the institution to fulfill its responsibilities.⁶² Recognized challenges of PIAC include the following:

- It has an ill-defined role as a voluntary, advisory institution to the executive branch and Parliament
- It is unable to demand information from the extractive industry sector
- There is a lack of parliamentary debate and/or interest in PIAC reports.
- It has a wide range of responsibilities that outstrip its level of resources⁶³—the impact of amendments which change the way it is funded have yet to be determined
- Key actors of PIAC, the MFEP, and the Bank of Ghana do not have to disclose conflicts of interest⁶⁴
- Government of Ghana practices include inadequate reporting and/or underreporting of quantitative data, which makes reconciliation with other sources difficult⁶⁵
- There are conflicting interpretations of subsections of extractive industry laws⁶⁶
- There are difficulties in forecasting⁶⁷ production⁶⁸

⁶² See, for example, Emmanuel K. Dogbevi, “PIAC Got No Office, No Letterheads, No Money from Government,” *Ghana Business News*, May 18, 2012, <http://www.spyghana.com/piac-got-no-office-no-letterheads-no-money-from-government/>.

⁶³ The committee is required, among other responsibilities, to consult widely with citizens, have its own secretariat, publish semiannual and annual reports in newspapers, publish its reports on its website, hold public meetings twice a year, and submit its reports to the president and Parliament. PRMA 815, Section 56.

⁶⁴ Concerning conflicts of interest, the act only addresses members themselves and not family or business relations. See also ACEP/Adam, Amewu, Abanga, Boakye, and Salifu, *How a Good Law May Not Stop Oil Money from Going Down the Drain*; {{This format, assuming second reference to this report. (First reference is FN46?)}} and ACEP, CEPIL, FoN, “Review of the Petroleum Management Act of 2011: Proposals Presented to the Ministry of Finance and Economic Planning,” [http://www.aceplive.com/wp-content/uploads/2013/12/\).pdf](http://www.aceplive.com/wp-content/uploads/2013/12/).pdf).

⁶⁵ There is an incentive for underreporting as “data on annual stocks and spill-over barrels do not affect the determination of the benchmark revenue, nor is it considered in crude oil accounting.” ACEP/Adam, Amewu, Abanga, Boakye, and Salifu, *How a Good Law May Not Stop Oil Money from Going Down the Drain*, iv.

⁶⁶ For example, the Petroleum Income Tax Law, 1987 (PNDC Law 188), and the Petroleum Agreement both prohibit capital gains tax. This prohibition contrasts with Section 95(1) of the Internal Revenue Act, 2000 (Act 592), that fixes capital gains tax at 10 percent and stipulates that in cases of conflict with other agreements, it is Act 815 that should prevail (Section 1[2]).

⁶⁷ Amendments to the act, passed after this research was complete, have made allowances for revisions of forecast in cases where oil prices change.

- It is difficult to comprehend the process of parliamentary approval of the government of Ghana's petroleum revenue budgets
- There are contradictions between Act 815 itself and agreements between the government of Ghana and international oil companies (IOCs)⁶⁹
- PIAC is unable to collect its own data⁷⁰

The result is that PIAC is not called upon to provide reports to either Parliament or to the executive branch, and neither political party has been known to use its reports.

Despite the broad criticisms of the Petroleum Revenue Management Act and the weaknesses of PIAC, some experts point to the act as evidence that civil society platforms can influence extractive industry lawmaking for the better.⁷¹ Indeed, there are suggestions that the incumbent National Democratic Congress (NDC) government is in favor of strengthening PIAC with legislation enabling it to demand data from the sector.⁷² Still, on this point, the current chairman of PIAC remained hesitant about whether he thought PIAC would gain greater legal powers.

Potential reasons for skepticism include the fact that there is little solid evidence of the discretionary powers of the Minister of Finance being used to strengthen accountability mechanisms. On the contrary, the experiences of the Act 815 review committee members point to ministerial unwillingness to make amendments that seriously improve oversight institutions. For example, looking at some of the other gestures made toward accountability in extractive industry-related statute, tribunals, as provided for in Act 654 in 2003, are not yet established, and, almost across the country, plans for ministry, department, and agency audit report implementation committees are either nonexistent or dysfunctional. One informant explained:

[E]ven the ministries, departments, and agencies that do have [audit report committees]—they are being asked to implement recommendations against themselves, and so what is the incentive for the committees to be efficient

⁶⁸ ACEP/Adam, Amewu, Abanga, Boakye, and Salifu, *How a Good Law May Not Stop Oil Money from Going Down the Drain*, 2.

⁶⁹ As an example, Act 815 defines the payment of capital gains tax from sales of "ownership of exploration, development and production rights." This however appears contradictory to the negotiated terms in the current Jubilee contracts which prohibit capital gain tax. ACEP/Adam, Amewu, Abanga, Boakye, and Salifu, *How a Good Law May Not Stop Oil Money from Going Down the Drain*, 5.

⁷⁰ In contrast to these weaknesses, a current minister and former member of PIAC said that he had never experienced any problems with members' conflicts of interest, obtaining data, or apparent contradictions between El law and practice. Interview, December 19, 2014.

⁷¹ Gyimah-Boadi and Prempeh, "Oil, Politics, and Ghana's Democracy."

⁷² Dogbe, *Follow the Money*, 18.

and functional? So those that have [committees] are not functional, but a lot of ministries do not even have [committees], and so the institutions and the structures that are supposed to act on the recommendations of PIAC do not provide sufficient grounds for the committees' work to be taken on board, and so, they may hold public hearings ... but they can only recommend.⁷³

Considering all of the above and reflecting on what drives decision-making around revenue sharing and extractive industries, it is clearly difficult to unravel the exact internal dynamics of the bureaucracies that produce unfavorable agreements for the country, particularly because the process of making agreements remains largely shrouded in secrecy, given a culture of nondisclosure and confidentiality clauses in the name of protecting business interests. Illustrative of the capricious forces that might drive these dynamics is the example of a former senior advisor to a minister of finance who was livid upon learning that the minister of lands and natural resources at that time had signed a lenient mining agreement.⁷⁴

This brief insight reveals a relatively high level of ministerial autonomy, a lack of oversight, and a lack of checks and balances—all within a large and fragmented system of decision-making. Leniency is evident in extractive industry-related law that allows for multiple interpretations and a high level of ministerial discretion, and it suggests a lawmaking rationale aimed at establishing a flexible legal framework that limits accountability and allows for nondisclosure. It is because of such discretionary powers that some agreements appear to trump the spirit of certain laws. The implication is that accountability is meted out in a closed informal system separate from the formal rules. In such an environment, the institutional incentives to improve ministerial and bureaucratic performance and accountability are diminished by the favors owed and given between potential decision-makers, as well as by the possibility of future gains from similar dealings.

It seems clear then that many political, economic, and institutional factors influence the formulation of revenue-sharing agreements in Ghana. The list of numerous institutional and structural features that may be significant includes the degree of competition and current level of international interest in the commodity in question; the estimations and forecasts of the future value of the “find”; whether the find is similar in size and value to existing areas of exploration and production; the estimated costs to government; the level of experience and expertise of negotiators; whether commodity prices are buoyant, stable, or erratic at the time of negotiations; the broader global economic outlook; the domestic economic situation; the influence of vested interests among (government) representatives; the balance of power between negotiators; and the timing of

⁷³ Amin Adam, interview.

⁷⁴ Former adviser, Ministry of Finance, interview, January 11, 2015.

negotiations in relation to an election cycle.⁷⁵ The result is that revenue-sharing agreements and contracts are not necessarily informed by existing laws; instead, they shape, and are shaped by, the incentives and capabilities of the wider political and economic decision-making environment, an environment constituted by both formal and informal rules, and by different interests, levels of knowledge, and incentives.

Clearly, a host of processes determine revenue-sharing agreements in Ghana. Notably, in terms of oil and gas revenues, the same legislation covering revenue collection also mandates how those revenues should be expended in the country. The next question is how the 80 percent of revenues that come from mining and go to the Consolidated Fund are allocated. For this examination, this research now turns to an exploration of the process by which the budget is formulated and executed.

⁷⁵ Former minister, expert on EI issues, interview, January 22, 2015.

4. BUDGET PROCESS AND REVENUE ALLOCATIONS IN GHANA

This section of the report examines how the budget process is meant to work, the formal institutions of oversight designed to ensure that it works properly, and the failings in the process. As in the preceding section, this one looks at what is meant to happen and what actually happens.

In an ideal situation, the national budget would be based on firm knowledge about the amount of revenue available. An important feature of many developing country budgets, however, is that such knowledge is not possible. In these countries, budgets are generally compromised by both limited information and a limited ability to forecast and project revenue flows. Thus, Ghana's national budgets are a kind of snapshot of known and expected revenue at a given time, which normally changes through the fiscal year.⁷⁶ Significantly, the implications are that the process of national budget making “is not based on any fiscal rules” that could otherwise define, for example, GDP-to-debt ratios, balance of payments deficits, or growth margins.⁷⁷

The timeline for budget formulation in Ghana satisfies the Organization for Economic Cooperation and Development (OECD) Best Practices for Budget Transparency.⁷⁸ Notably, however, the country fares relatively poorly on the

⁷⁶ Ghana's fiscal year is the same as the calendar year.

⁷⁷ Kwakye, J.K., and Nkechi Owoo. *Righting the Ills of Budget Preparation, Implementation and Oversight in Ghana*. IEA Monograph 39. Institute of Economic Affairs (IEA), 2014:22.

⁷⁸ This places Ghana seventh of 26 countries in timeline transparency. See Collaborative Africa Budget Reform Initiative (CABRI) and African Development Bank (AfDB), *Budget Practices and Procedures in Africa 2008* (CABRI, 2008), 4, <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/CABRI%20AfDB%20ENG.pdf>.

Open Budget Index.⁷⁹ Budget making, planning, and formulation are meant to be defined and guided by Ghana's Medium Term Expenditure Framework (introduced in 1999 as an element of the country's Public Financial Management Reform Program, or PUFMARF).⁸⁰ The rationale of the Medium Term Expenditure Framework was to shift the budget from an input-driven process (based mainly on the availability of revenue) to an output-driven process (based on desired goals and outcomes) in which greater autonomy is handed to ministries, departments, and agencies. This shift was also meant to establish budget ownership and responsibility over planning and to improve accountability and transparency.⁸¹ The Medium Term Expenditure Framework enables the current annual budget to be tied to rolling budgets over coming years in accordance with a national development strategy.

The terms by which resources are financially managed, and the roles of the executive, legislative, and judicial branches of government in this process are stipulated in the 1992 Constitution, Articles 174–189. The budget has a hierarchical structure, whereby the Cabinet is empowered to create and impose ceilings “for all types of expenditure at a line item level.”⁸² The Medium Term Expenditure Framework considers the sectors that define three-year ministerial objectives covering: (1) infrastructure, (2) administration, (3) social, economic, and governance, and (4) public safety.⁸³

The process for developing the budget proceeds as follows: First, the MFEP defines the resource envelope along with macroeconomic and sector objectives. Next, priorities with mission statements and cost projections are made by ministerial budget committees, guided by the MFEP's defined ceilings. Revenues and expenditure ceilings are usually based on the previous year's allocation and spending, investment priorities, particular executive priorities, and the need to

⁷⁹ Ghana is identified as only providing “some” budget information in 2010 and 2012, with “insufficient” reporting in 2015 “Open Budget Index Rankings,” International Budget Partnership, 2015 <http://internationalbudget.org/opening-budgets/open-budget-initiative/open-budget-survey/publications-2/rankings-key-findings/rankings/>.

⁸⁰ The objective of PUFMARF is to stabilize fiscal policy and improve service delivery with the allocation of resources to strategic priority areas. See Samuel Nana Yaw Simpson, “Developments in Public Sector Accounting Practice: The Ghanaian Experience,” in *Accounting in Africa*, ed. Venancio Taurigana and Musa Mangena (Emerald Group Publishing, 2012), 214.

⁸¹ Eboe Hutchful, “Ghana,” in *Budgeting for the Military Sector in Africa: The Processes and Mechanisms of Control*, ed. Wuyi Omitoogun and Eboe Hutchful (Stockholm International Peace Research Institute, 2006), 91.

⁸² Wuyi Omitoogun, “Introduction,” in *Budgeting for the Military Sector in Africa: The Processes and Mechanisms of Control*, ed. Wuyi Omitoogun and Eboe Hutchful (Stockholm International Peace Research Institute, 2006), 7.

⁸³ Hutchful, “Ghana,” 79.

ensure that recurrent costs are covered.⁸⁴ Ministries, departments, and agencies review their budgets, strategic plans, outcomes, and costs, and their priorities are presented to the MFEP, with estimates within the guideline ceilings. These priorities are subject to budget hearings in which estimates may be revised. Budget hearings aim to ensure estimates are within ceilings and consistent with plans. Sector ministries then prepare their budgets based on budget guidelines and MFEP ceilings, and review their own medium-term policy and expenditure priorities. Their three-year expenditure budget is then passed to the MFEP, which formulates the consolidated budget.⁸⁵ Estimates are subsequently approved and submitted to Cabinet and then to Parliament for further approval. After the budget has been approved, the Ministry of Finance releases funds to ministries, departments, and agencies through the Controller and Accountant General's Department (CAGD).⁸⁶

In reviewing the budget, the legislature cannot “increase existing items nor create new ones” and can only “decrease existing expenditures/revenues.”⁸⁷ Any unallocated money cannot be reallocated by the executive branch. If the legislature fails to approve the budget before the commencement of the fiscal year, it votes on interim measures. Supplementary appropriations are necessary as new projections of revenue, unanticipated expenditures, and new knowledge about macroeconomic performance come to light through the year after the budget has been passed. Supplementary appropriations, approved by Parliament, give the government legal protection for (further) spending. Actual revenues and expenditures are published and made publicly available every six months.⁸⁸ With conditions, ministers can reallocate funds “between line items within their responsibility.”⁸⁹

CONTROLLING THE EXECUTION OF THE BUDGET

A central institution concerned with ensuring accountability over the budget process is, of course, the legislature, which has to pass the budget after it has been debated. Other important mechanisms of accountability include the reports of the auditor general from the Ghana Audit Service, which is constitutionally

⁸⁴ Michael Johnson, “Understanding the Real Budget Process: The Case of Ghana,” Ghana Strategy Support Program/Discussion Note 29 (International Food Policy Research Institute [IFPRI], 2013).

⁸⁵ Hutchful, “Ghana,” 81.

⁸⁶ J.K. Kwakye and Nkechi Owoo, *Righting the Ills of Budget Preparation, Implementation and Oversight in Ghana*, IEA Monograph 39 (Institute of Economic Affairs [IEA], 2014), 4.

⁸⁷ CABRI and AfDB, *Budget Practices and Procedures in Africa*, 12.

⁸⁸ Ayee, Søreide, Shukla, and Le, *Political Economy of the Mining Sector in Ghana*.

⁸⁹ CABRI and AfDB, *Budget Practices and Procedures in Africa*, 17. The conditions themselves are not explained in the CABRI-AfDB report.

mandated under Article 187(2), and the Controller and Accountant General's Department. The former produces bulky reports to Parliament and the parliamentary Public Accounts Committee. The Petroleum Revenue Management Act (Act 815) did not take away the obligation of the auditor general to audit and report on petroleum revenues. The auditor general therefore has to audit the petroleum revenues as part of an annual examination of all revenues accruing to government.

A key role of the Public Accounts Committee (PAC) is to hold public hearings, call in and question public servants, and report to Parliament. The Public Accounts Committee reviews the financial transactions based on the auditor general's report to Parliament and can make recommendations to iron out any irregularities, including the retrieval of funds, legal action, and sanction - which are tabled on the floor of the legislature for deliberation and acceptance, and which will figure in a Public Accounts Committee report. The Controller and Accountant General's Department is more of an *ex post* accountability institution that is supposed to only allow payments to ministries, departments, and agencies after expenditure is verified and the availability of revenue is checked.

The role of parliamentary committees is to provide oversight of ministerial and government activities, and, more generally, to research, investigate, and provide a platform for public participation. Standing committees are concerned with the governing of the legislature, and select committees monitor the role of ministries.⁹⁰ Members of Parliament have to apply for committee positions and are appointed to between one and three committees. The leadership of the majority party appoints most committee leaders, and these leaders tend to be from the majority party. That said, the Public Accounts Committee and the Committee on Subsidiary Legislation chairmanships are reserved for the minority party members, and their committee leaders are appointed by the minority party.

Appointment to various committees is based on factors such as standing in public life, expertise, and political experience. Party leaders often forward suitable candidates to the Parliamentary Select Committee and the House. The process of appointment as well as the constitution of committees is guided by the constitution itself following "standing orders of Parliament, regional balance, party unity, and compromise between the majority and minority party."⁹¹

⁹⁰ Robert I. Rotberg and Jennifer E. Salahub, *African Legislative Effectiveness*, Research Report (North-South Institute [NSI], 2013), <http://www.nsi-ins.ca/wp-content/uploads/2013/10/2013-African-Legislative-Effectiveness1.pdf>.

⁹¹ Rick Stapenhurst and Riccardo Pelizzo, "Improving Democracy and Accountability in Ghana: The Importance of Parliamentary Oversight Tools," *Governance: An International Journal of Policy, Administration, and Institutions* 25, no. 2 (2012): 335–46.

FAILINGS IN THE BUDGET PROCESS

Despite the provisions described above, the budget process suffers from numerous problems, and the administration and execution of the budget frequently fails to follow formal guidelines. A major problem is that a substantial portion of revenue comes in during the second half of the year, when donor funds are made available. The result is delays in the release of funding,⁹² which impact negatively on planning and cause problems for sectors in which production is seasonally sensitive (e.g., agriculture). Delays (envisaged or otherwise) complicate the tracking of expenditure to its final destination and derail performance and effectiveness targets. The level of effectiveness in budget execution is influenced by the extent to which sufficient resources are allocated, which in turn influences the quality of program and policy implementation. From the literature, it appears that more emphasis has been placed on affecting budget allocations than in ensuring the quality of budget execution.

Budget administration has, until recently, employed an activity-based budgeting system introduced by international financial institutions in 1998. The system focuses on reporting and monitoring disbursements rather than on providing indicators to ensure the quality of service provision.⁹³ From 2014, Ghana was poised to use a program-based budgeting (PBB) system to replace the activity-based system. The aim was to improve accountability by connecting the flow of resources to outputs in the form of fulfilling specific policy objectives. It is too early to evaluate the success of PBB in Ghana, but reports from Mozambique, where the approach has been introduced, point to PBB not being able to identify what exactly money has been spent on, only that it has been spent.⁹⁴

Uncertainty and debate over data and projections mean that the calculations over these figures become part of the political game. Most notably, this uncertainty has resulted in budget formulations based on systematic underestimation of salaries and overestimation on all other expenses.⁹⁵ CDD-Ghana reports that the situation reflects salary budgets being left as estimates “subject to final decisions on salary increases and on staff numbers.” This practice provides flexibility and results in contingency budgets that are made to cover the anticipated cost of adjustments. Meanwhile, any underestimates demand that the MFEP has to find

⁹² Johnson, “Understanding the Real Budget Process.”

⁹³ Johnson, “Understanding the Real Budget Process.”

⁹⁴ Johnson, “Understanding the Real Budget Process.”

⁹⁵ Killick, Tony. “The Politics of Ghana’s Budgetary System.” CDD/ODI Policy Brief No. 2. Ghana Center for Democratic Development (CDD), 2005. <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1963.pdf>.

“funding for the (unbudgeted) difference from either non-salary recurrent budgets or from development expenditures.”⁹⁶ Notably, the issue of a wage bill has been a concern in Ghana for some time. Some changes were introduced in 2014, and the recent IMF negotiations⁹⁷ have also sought to resolve this issue. It is currently too early to tell if these efforts have had any success in addressing these problems.

For ministries, departments, and agencies, it is normal that the disbursement of their funds be delayed for numerous months owing to unforthcoming or unrealized revenue flows. These delays result in weak relationships between approved budgets and what money ends up being spent on, and they increase the likelihood of negative impacts on programs and projects. Furthermore, observers highlight that the necessity for supplementary budgets makes the process of planning and decision-making related to budget deficits difficult to follow, regardless of biannual publications of actual revenues and expenditures.

In terms of parliamentary oversight, it is very rare for a budget not to be passed by the legislature, and it is broadly acknowledged that Parliament cannot satisfactorily fulfill its oversight functions as regards the budget. (More details on why this is the case are provided in Section 5.) In addition, MPs acting on standing and select committees can be influenced by the interests of government and suffer from resource and capacity issues—including a lack of expert staff with no parliamentary budget office. As a result, parliamentary committees appear to play an ambiguous role: On the one hand, their composition and functioning generates an idea of an inclusive and cross-party parliamentary system of oversight in which all members are formally required to participate. On the other hand, committees are starved of sufficient resources, do not have the legal teeth to force through recommendations, and—owing to incentive problems (Section 6)—do not systematically act as a brake on the workings of the executive branch.

Considering budget ceilings, some observers claim that the outcome of hearings can be significantly influenced by ruling party interests.⁹⁸ The notion of an inclusive budget is also contested by accounts of rural-based district chief executives (DCEs) in the Northern Region, who indicated that the budget is

⁹⁶ CDD-Ghana (Andrew Lawson, Gyimah Boadi, Ato Ghartey, Adom Ghartey, Tony Killick, Zainab Kizilbash Agha, Tim Williamson). Joint Evaluation of Multi-Donor Budget Support to Ghana Based on OECD-DAC methodology; Final Report Volume One: Evaluation Results and Recommendations on Future Design & Management of Ghana MDBS, Report to the Government of Ghana and to the MDBS Partners. ODI (2007) pp 149. <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/247.pdf>

⁹⁷ In February 2015 Ghana was in negotiations with the IMF, following the country’s request for support to deal with its financial crisis. Parts of the bailout package included conditions for more responsible spending and budget control.

⁹⁸ Sakyi, Azunu, and Mensah, “Legislator Views on Knowledge and Capacity Challenges,” 9.

made in Accra with little input from outer lying areas. Notably, while the formal budget process includes provisions for inputs from the regional budget into the national budget (in the form of the composite budget⁹⁹), when rural-based DCEs were asked about their role in the budgetary process, they described how they are allocated travel and accommodation expenses, allowing them to travel to the northern capital of Tamale for regional coordinating meetings with the regional minister in order to be briefed about government policy. They described how they are not consulted on national budgetary issues and said that the gatherings are purely informative—as well as social and political (for party purposes).¹⁰⁰ Asked about the role of MPs in the process of budget making, a Northern Region MP explained:

Before they [the MFEP] come out with the budget to Parliament they would have taken them [other ministers] through all these formulas for them to accept in order to prepare it. We [MPs] will not be in the meetings because we are just in the legislation aspect of the government. We will not be previewed on what is going on... and are not involved. But when it comes to the floor of Parliament, we think [that] as members of Parliament we still need enough time, because the budget document is big and complicated. So we need time to be able to scrutinize it well, other than that we may gloss over certain things that we will not have time for. ... [S]ometimes we meet at the committee levels for the various sectorial budgets [where we look at] the overview of 2014 and the projections for 2015. [W]e look at all those things, but there is still not much time [and] we are not [always] able to get a ... technocrat ... to take us through, but at least we do our best, we are able to do about 60 to 70 percent.¹⁰¹

This opinion is shared by most informants, who agreed that the making of the budget is a closed intragovernmental process from which civil society is excluded. Writing in 2005, the Ghana Center for Democratic Development (CDD-Ghana) states that civil society inputs are not institutionalized and that district assembly participation is curtailed because discussions are overwhelmingly based in ministries in Accra.¹⁰² Still, district assemblies are obligated to communicate revenue flows and expenditure to communities at public meetings.

⁹⁹ The challenges and successes of the composite budget process (introduced in 2012) are not discussed in this work because the focus of this research is on the national budget process. However, in this regard, it can be noted that few sources that document the budget process highlight the role of the composite budget in making any significant contribution to the national budget process.

¹⁰⁰ District chief executive, Northern Region, interview, January 9, 2015.

¹⁰¹ MP, interview, December 15, 2015.

¹⁰² Killick, Tony. "The Politics of Ghana's Budgetary System." CDD/ODI Policy Brief No. 2. Ghana Center for Democratic Development (CDD), 2005. <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1963.pdf>.

Finally, oversight institutions are also characterized by numerous problems. Reports from auditors can experience significant delays, such as the Ghana Audit Service report for 2013 being released over a year late. Similarly, the functions of these institutions do not appear to be binding. For example, the Controller and Accountant General's Department, whose job it is to ensure that payments to ministries, departments, and agencies only happen after expenditure is verified and the availability of revenue is checked, can be "breached through official interventions and unapproved payments."¹⁰³

The introduction, in 2009, of the Ghana Integrated Financial Management Information System (GIFMIS)—an automated system for the processing of expenditure—was meant to resolve some of these issues by improving budgetary processes at the Controller and Accountant General's Department, the Ministry of Finance, and the Public Services Commission.¹⁰⁴ As yet, it is not possible to tell if GIFMIS has made a substantial impact on resolving these specific challenges.

In theory, the Public Accounts Committee (which is responsible for reading the reports of the Ghana Audit Service, holding public hearings, calling in and questioning public servants, and reporting to Parliament) should be a central mechanism to hold government to account. In practice, however, its role is limited. It does not influence executive branch decision-making processes, its work can be restricted by party discipline to minor cases of maladministration, it has no power to prosecute, and, in cases of monitoring the flow of revenues, it is reliant on government-produced data.¹⁰⁵ In all, despite often-convincing evidence demonstrated in reports of the Auditor General, the Public Accounts Committee has great difficulty in either retrieving misused funds or getting the political support needed to implement concrete recommendations for better administrative practice.

Efforts at reforming the budget have had limited success. The Public Financial Management Reform Program (PUFMARP, mentioned earlier) has experienced slow progress across a number of its 10 elements, including computerization, improving expenditure and cash management practices, procurement reform, and fiscal decentralization. According to CDD-Ghana, the challenges are rooted in poor coordination, the reform package being far too ambitious, and the fact that PUFMARP is seen by implementers as externally driven and having a lack of

¹⁰³ Kwakye, J.K., and Nkechi Owoo. *Righting the Ills of Budget Preparation, Implementation and Oversight in Ghana*. IEA Monograph 39. Institute of Economic Affairs (IEA), 2014.

¹⁰⁴ Dogbe, *Follow the Money*, 13.

¹⁰⁵ Rick Stapenhurst and Michael Alandu, *The Accountability Function of the Parliament of Ghana* (2007), 18.

domestic ownership.¹⁰⁶ A 2012 donor-commissioned report concludes that there is a distinct dearth of political commitment and leadership and a loss of initial PUFMARP reform momentum.¹⁰⁷

As such, no clear rules divide responsibilities in the budget process. This ambiguity has meant that the process of budget making and planning may change from government to government, as seen by the changing role of the Planning Commission, which formally functions under the president, but which, in practice, according to critics, has been merged with the MFEP. The result is that project planning and guidance about budgeting that is forwarded to ministries, departments, and agencies is open to politicization. There is an overt focus on short-term planning agendas, where each new government formulates its own development plans that in due course are shunned by their successors.¹⁰⁸ A key challenge is the refusal of successive governments to align their budgets to a predetermined Development Plan as envisaged in the Constitution and also in Section 21(2)(d) of Act 815, which directs that the “ABFA [Annual Budget Funding Amount] expenditure must be guided by a medium-term expenditure framework aligned with a long-term national development plan approved by Parliament.”

Observers acknowledge the failings of reforms and of the above accountability mechanisms despite changes in public institutions brought about by GIFMIS. The budgetary process is still input driven (meaning it is based on what the MFEP thinks is available) and characterized by lack of discipline and ownership. This assessment is evidenced by the fact that since the ratification of the Financial Administration Act in 2003, no ministry, department, or agency has prepared annual financial statements, as is required by that act.¹⁰⁹

The result is that actual expenditures bear little resemblance to approved allocations, and most ministries either overshoot or underspend, with deficits carried on to the next year. Informants explained that any instances of overspending will appear in the end-of-the-year report of the auditor general, whose office will ask the Ministry of Finance and relevant institutions to explain the unfunded spending. In theory, the spending could have been approved by the

¹⁰⁶ Tony Killick, “The Politics of Ghana’s Budgetary System,” CDD/ODI Policy Brief No. 2 (Ghana Center for Democratic Development [CDD], 2005), <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/1963.pdf>.

¹⁰⁷ Mary Betley, Andrew Bird, and Adom Ghartey, *Evaluation of Public Financial Management Reform in Ghana, 2001–2010: Final Country Case Study Report* (Sida, 2012).

¹⁰⁸ Ayee, Sørreide, Shukla, and Le, *Political Economy of the Mining Sector in Ghana*, 32.

¹⁰⁹ Ghana News Agency, “Ghana Headed for Serious Crisis—Kan Dapaah,” NewsGhana.com, October 24, 2014, <http://www.spyghana.com/ghana-heading-for-serious-crisis-kan-dapaah/>, accessed November 7, 2014.

Controller and Accountant General's Department, although by law it needs parliamentary endorsement before distribution.

Any examples of overspending can also be discussed by the PAC, which can call in and question relevant actors. If agreed, the PAC will put forward a motion for a retrospective approval. The Audit Service Act (2000) calls for audit report implementation committees to ensure that any recommendations passed by Parliament (for example, for retrieval) are implemented by the respective ministry, department, or agency. Audit report implementation committees are also tasked with making their own reports to this effect. Finally, ministries, departments, and agencies are obliged to report on how any Public Accounts Committee recommendations that they might have received have been implemented. In practice, however, this chain of accountability functions very differently: Public Accounts Committee reports are invariably not deliberated on the floor, which means audit report implementation committees have no parliamentary-endorsed report to form a basis for their follow-up role. At the end of 2012 there had not been any audit report implementation committees established in any of the institutions. Meanwhile, ministries, departments, and agencies do not report back on what they have done to improve practices (and they are not levered to do so). Consequently, year after year, the recognized shortcomings of the financial management of public institutions addressed by the auditor general and Public Accounts Committee are not improved upon.¹¹⁰

In addition to these problems, when assessing the effectiveness of accountability mechanisms in monitoring the budget process, it is relevant to recognize that a significant part of government expenditure is “off-budget,” including substantial expenditures such as “social security funds, loan guarantees, public sector pensions and donor funds,” which are not bound by budgetary rules.¹¹¹ Off-budget spending typically takes place when actual allocations fall short of expected allocations, leading to projects that have begun without a sufficient budget and that need supplementary funding. Off-budgeting can occur when grant and other money does not go through the central budget because agencies want to manage the fund themselves. It can also occur as a result of struggles between, on the one hand, a particular ministry, department, or agency, and, on the other, the MFEP, where the former commits itself to spending without the approval or knowledge of the latter, or when the decision of the latter is disregarded.

A former senior adviser to the minister of finance remarked that the consequence of a ministry, department, or agency going against the minister of finance

¹¹⁰ Kusi, interview, April 16, 2015; leading member, Ghana Anti-Corruption Coalition, interview, April 17, 2015.

¹¹¹ CABRI and AfDB, *Budget Practices and Procedures in Africa*, xii. Auditing and reporting of donor fund usage is described as “medium-high coverage.”

depends on the latter's influence (based on status, experience, political capital, etc.) and courage at the Cabinet level. Often, the money will be found to avoid court action by creditors. When ministries, departments, and agencies go against the minister of finance, the latter's position is also weakened. This outcome reflects the current financial administration laws not having provisions for punishing ministries, departments, or agencies in the event of financial misconduct, and it may partly explain why reviews of the budget process are insufficient.¹¹² Besides the legal framework not being favorable to the imposition of sanctions for maladministration, accountability mechanisms are also hindered by widespread capacity challenges. In the case of the Ghana Audit Service, for example, its ability to fulfill terms of reference are hackneyed by "limited funding and staffing, lack of logistics, infrastructure and human resource training," all of which contribute to considerable, systematic backlogs.¹¹³ Based on the above, it would appear that the budget process in Ghana, despite having a clear description of its formulation and execution, and despite the existence of a host of accountability and reporting mechanisms, suffers from major deficiencies. The formulation of the budget does not appear to be driven by any "fiscal rules," and monitoring of the expenditure side of the budget appears to be especially weak. In this context, a significant question for this research pertains to who is able to influence earmarking processes regarding petroleum revenues and who is able to shape budget priorities. The next section seeks to address this question.

¹¹² Former senior adviser, Ministry of Finance, interview, January 11, 2015; Johnson, "Understanding the Real Budget Process."

¹¹³ Dogbe, *Follow the Money*, 24.

5. INFLUENCING REVENUE ALLOCATIONS

Considering all of the above, this research is ready to explore who determines budget expenditure and the allocation of natural resource revenues. Because mineral revenues in Ghana are allocated through the general budget, while oil revenues are legally allocated to funds with distinct governance requirements, the report considers sources of relative influence over both of these revenue flows.

INFLUENCE OVER OIL REVENUES

Regarding oil revenues and the Annual Budget Funding Amount (ABFA), the vagueness of the 12 priorities set forth in Act 815 (mentioned earlier) suggests that lawmakers have sought to appease all levels, sectors, and segments of society. Meanwhile, in the absence of a definitive prioritization or long-term development plan, the fact that almost any investment could reasonably be justified in some way as falling under one of the 12 priorities has maximized executive control over decision-making regarding oil revenues. As a result, the risk of ineffective use and distribution of resources is real. In the period 2011–2013, and then maintained in 2014, the executive branch developed four priority areas:

1. Expenditure and amortization of loans for oil and gas infrastructure
2. Road and other infrastructure
3. Agriculture modernization
4. Capacity building (including oil and gas)¹¹⁴

It's clear that an overriding priority has been in the direction of national industrialization in order to diversify the economy. Breaking down infrastructure spending, however, it is noticeable that the Office of the President (which covers a number of central state positions and institutions) was allocated 11 percent of the ABFA, with 4 percent for recurrent spending, which was more than the

¹¹⁴ For allocation of revenues see ACEP, *Three Years of Petroleum Management in Ghana*.

amount allocated to education, health, employment, youth, and sports.¹¹⁵ Such prioritizations illustrate executive dominance over the use of EI revenue. Of further note in this regard is that allocations to the social sector (for instance, the Ghana Education Trust Fund and the National Health Insurance Fund) are in decline and at any rate cover mainly recurrent costs to the detriment of needed long-term investments.

Of particular interest to this report is the extent to which ABFA allocations have prioritized investments in agriculture; historically, agriculture has been fairly marginalized in the ABFA allocations. Between 2011 and 2013 the average contribution was just 6.5 percent, varying between 14 percent in 2012 and 2.5 percent in 2013. However, increasing the contribution to agriculture has been an explicit campaign goal of civil society groups within Ghana, particularly through the Oil for Agriculture campaign. The campaign focused on asking for 30 percent of the ABFA to be allocated to agriculture in 2014. Following the campaign, the ABFA allocation to agriculture was bumped back up to 14 percent for 2014, split approximately 70-to-30 between farming and fishing.

In such a case, causality is hard to discern. On the one hand, increasing the allocation from 2.5 percent to 14 percent is significant. On the other hand, similar allocations have occurred previously (being around 14 percent in 2012). The strong bias toward the fisheries sector, despite its impacts on poverty being more limited, is also notable, suggesting that features other than the logic of the campaign¹¹⁶ may have driven this allocation. Such factors notwithstanding, the outcome of the campaign does suggest that civil society may be able to effectively advocate for the allocation of oil revenues in Ghana. Bolstering such claims is the fact that CSOs have also been very involved in campaigning for the ABFA to be used to provide resources for PIAC operation. As was mentioned earlier, this reform was achieved with the Amendment to Act 815. Tempering this success, again, is the fact that the impacts of the amendment, which simply empower PIAC to submit a budget to the minister, are yet to be seen as the minister still holds discretion as to whether that budget should be funded.

Beyond agriculture and industrialization, questions over the capitalization of the Ghana National Petroleum Corporation (GNPC) have arisen as it has been noted that the use of the Annual Budget Funding Amount (ABFA) for GNPC capitalization¹¹⁷ is not consistent with Act 815. In fact, this issue is currently the

¹¹⁵ ACEP, *Three Years of Petroleum Management in Ghana*, 26.

¹¹⁶ The dominant logic of the campaign was focused on the fact that agriculture employs the largest number of people in the country and makes the largest contribution to GDP. In addition, most of the people who work in agriculture are the poorest in the country. As such investments which increase agricultural productivity are thought to have the most profound effect on poverty and growth.

¹¹⁷ Note that the amendments to Act 815, passed as this research report neared completion, include allowances for payments to the GNPC to be made directly from the Petroleum Holding

subject of a Supreme Court case pursued by a group of opposition MPs who allege that such usage without the approval of Parliament breaches both Act 815 and the Constitution. As one of the plaintiffs explained:

GNPC obviously is a major beneficiary of the distribution of the oil and gas revenues so how we monitor them, and make sure that they are doing the right thing, is very important. ... I will give you a good example. In 2013, the moneys that were given to GNPC, at least \$32 million, were used to pay a debt owed by TOR, the refinery. That was not what we gave the money for. That's number one. Number two, three years in a row, they [GNPC] have never spent all the money. They always have a surplus, which is now about 250 million. Now this is a company that is supposed to be very good at budgeting. Three years in a row now they have had surpluses and they have always said that for technical reasons they couldn't use the money. But this is an example of where they miss-supply the money [*sic*]. So if you look at all of that, it is important that we check them. The law mandates that Parliament approves their programs and activities every year. As far as I know for 2015, we have not approved [these]. Last year, what we approved did not include [what] they were going to borrow the money for. So I have not yet approved for 2014, and I have not yet approved for 2015. What is the justification for coming up with that type of program? Assuming that with that type of program Parliament decides to object, then they cannot borrow! So our case is simple. Let us interrogate, let us approve their programs and activities, and let's see if they really need to borrow. My information is that what they need it for is a development that has not even been approved, so what is the rush? The budget that I have seen, that they brought, and which has not yet even been approved ... they met the energy committee and a lot of questions were raised. It should have come to the finance committee for us to report back to the plenary ... that [budget] is over bloated ... [so] we went to court to stop them from borrowing ... the spirit of the law is being breached! ... Our position at court is that the Constitution is being breached. ... [I]t's not only a constitutional breach, but also a breach of the act, as the programs and the activities must be approved by parliament *abinitio* [from the beginning].¹¹⁸

Clearly, GNPC capitalization has become a test case about decision-making concerning the use of oil revenue and the role of Parliament, and it demonstrates

Fund (Amendment 6 of the Petroleum Revenue Management [Amendment] Act, 2015). This means that the ABFA will no longer need to be used for this purpose. Despite this change, the willingness to defy legal procedure being described here remains emblematic of the extent to which the executive is able to manipulate the management of revenues regardless of the legal environment. In addition, the simple manner in which amendments to the act have been passed that make this activity legal further highlight the manner in which the executive branch is able to shape these processes.

¹¹⁸ Hon. Anthony Akoto Osei, interview, January 21, 2015.

how emerging extractive industry legal regimes are open to multiple interpretations.

Also notable regarding GNPC capitalization is that neither CSOs nor local governments lobby for this allocation. As such, notwithstanding the successes just mentioned, the prioritization of capitalization within the ABFA suggests that the influence of civil society and local government over budget allocations might, in fact, be highly circumscribed. This thesis is furthered by the fact that amendments to the Act 815 introduced after this research had been completed appear, if anything, to increase the capacity for petroleum revenues to be used for GNPC capitalization¹¹⁹ and strengthen the operating potential of the GNPC.¹²⁰ In addition, the case of GNPC capitalization also suggest that prioritizations of oil revenue are GNPC friendly (especially as the revenue allocated to this institution appears not to have been fully used or approved)¹²¹ and that the minister of finance has historically interpreted the formal laws to suit narrow sets of interests. Finally, it would appear that such allocations bolster the case for characterizing Parliament as being in an inferior position to the executive branch of government, as on numerous occasions and in apparent conflict with the formal rules, parliamentary oversight has been circumvented.¹²²

Considering these factors, it appears that decision-making power over the use of petroleum revenues is largely centralized within the executive branch, while departments, agencies, local government, and civil society have only limited influence.

INFLUENCING OVER BUDGET ALLOCATION

As a precursor to discussing the way in which resources are effectively allocated in the budget, it is relevant to recognize that 70 percent of the total budget covers recurrent expenditure in the form of wages. This situation means that when talking about having influence over the budget it is influence over the remaining 30 percent of the budget that is being discussed.

¹¹⁹ Such allowances include making disbursements to the national oil company the first priority for the Petroleum Holding Fund (Petroleum Revenue Management [Amendment] Act, 2015 [Act 893], Section 6).

¹²⁰ "Ghana: Petroleum Revenue Management Amendment Bill 2015 Undergoes Second Reading," *All Africa*, June 24, 2015, <http://allafrica.com/stories/201506251073.html>.

¹²¹ ACEP writes of the real risk that allocations of tens of millions of dollar to the Ghana National Petroleum Corporation (GNPC) could be used as government slush funds. . ACEP 2014;18.

¹²² Future oil and gas revenues and the ABFA are now used as collateral for a \$3 billion loan from the China Development Bank to finance infrastructure. The original agreement demanded a parliamentary amendment as it was found to contravene Act 815, which directed crude oil lifting revenue to the Heritage Fund. ACEP, *Three Years of Petroleum Management in Ghana: Transparency without Accountability*.

Although the overall budget process is intended to be top-down (through the Ministry of Finance and Economic Planning) and then back and forth (through budget hearings), studies point to a process driven by the executive branch, with the minister of finance delegating authority downward, through the use of ceilings. While the exact rationale behind the setting of ceilings is hard to follow,¹²³ it appears from interviews that several key factors matter:

1. The amount available in the overall budget
2. The ability of a ministry to utilize previous years' allocations
3. The ability of a ministry to convince the Ministry of Finance that extra money is necessary
4. The significance of any particular special priorities the government may have that limit allocation
5. Any particular preferences or objection the Ministry of Finance may have against the plans of other ministries

Ceilings are also influenced by factors such as the evidence base, policy directives, pragmatism, and political interests. Parliament has difficulty cutting allocations, as the decision has been made by the time the document reaches Parliament, and parliamentarians may find it difficult to assess the basis for a particular cap or to attain evidence to argue against an allocation. Conversely, some sources suggested that the MEFP can more easily slash allocations on the basis of unconvincing evidence; other sources were of the opinion that the discretion of the minister of finance to dictate budgetary allocations is often exaggerated.

Executive control over the budget is enabled by a Parliament that is unable to function in its oversight capacity (Section 5). That said, it has already been pointed out that ministries, departments, and agencies are, on occasion, able to push back against executive control by ignoring the directives of the minister of finance, or by acting without the ministry's authority and leveraging off-budget expenditure. In such instances, it is the power balance between the offending minister and the minister of finance that seems to matter.

While thus far it has been useful to think of influence over the budget and influence over earmarked revenues as separate processes, it should be noted that in certain respects, influence over the budget has implications for influence over oil revenues and vice versa. This should make sense as, for example, one would expect policy priorities in the budget to mirror priorities in the ABFA. Likewise, one would expect sectoral allocations from the ABFA to moderate allocations from the budget. In this respect, it is worth noting that two prominent processes shape allocations of both the ABFA and the general budget: calculations around revenue projections and the process of policy ranking.

¹²³ ACEP, *Three Years of Petroleum Management in Ghana: Transparency without Accountability*.

Regarding calculations around revenue projections, it is notable that allocations for the Annual Budget Funding Amount and national budget appear to be shaped not only by the revenue flows themselves but by competing interpretations about how much is available, how much is expected to be available, and how figures are reached. For example, concerning extractive industry revenue projections, in November 2014, the minister of finance presented the 2015 Budget Statement and Economic Policy to Parliament based on petroleum prices of \$99 a barrel although prices were \$80 on the day and fell to half of that through December, while the budget was being debated.¹²⁴

Beyond commodity price projections, the setting of budget priorities may also involve debate over the computation methods and public accounting systems for reaching particular estimations, with ministries, departments, and agencies vying to maximize their allocations. This process means that the accounting of public finance, revenue, and spending affects the priorities made in the budget and policy objectives. In this context, the government typically has a political interest in portraying the idea that there is more available in the budget than what may be reasonably estimated, with the consequence that budgets frequently overshoot actually realized revenue.

In terms of policy ranking, the effect of this practice is evident in support given to initiatives such as the school feeding program, the national youth employment program, and the livelihood empowerment against poverty initiative. Nevertheless, the issue of ranking and prioritizing should not be overestimated, and it has to be realized that some posts, such as transport and the Office of the President, which are not prioritized under the Annual Budget Funding Amount (ABFA), received substantially more resources than agriculture in 2014, which (as was mentioned) was an ABFA priority. Given these observations, it is valuable to take a moment to explore how allocations to the agricultural budget are made, as agriculture is a focus point for this research.

DRIVING ALLOCATIONS INTO AGRICULTURE

There is broad political recognition of the significance of agriculture and of the Medium Term Agricultural Sector Investment Plan, not least because many national development features are directly and indirectly affected by the plight of rural economies (for example, to reduce reliance on the import on basic food stuffs, to increase food security, to lessen rural-urban migration, and to lessen

¹²⁴ The projection, based on a seven-year rolling model as defined in the Petroleum Revenue Management Act, has been characterized as a source of confusion for MPs and has led to calls for better modeling to be used. See “Ghana Revenue Management Analysis Tool” (STAR-Ghana and Natural Resource Governance Institute [NRGI], n.d.), http://www.resourcegovernance.org/sites/default/files/NRGI_GhanaRevenueManagementAnalysisTool.pdf.

energy demands). As a result, the Medium Term Agricultural Sector Investment Plan targets a 6 percent rate of growth in the agricultural sector (which has been achieved once since 2009), with an allocation of at least 10 percent of the national budget needed annually to meet the target set in the 2003 Maputo Declaration¹²⁵. Regardless of such stated ambition and commitments, however, investments in agriculture are criticized as piecemeal (for example, programs such as Youth in Agriculture and Rural Growth Progress) to the point where “we don’t even assess the impact of the small allocations that do find their way to agriculture.”¹²⁶

Agricultural budgeting involves several ministries, departments, and agencies (including fisheries, forestry, research, and feeder roads) that are guided by the strategies contained in the Medium Term Agriculture Sector Investment Plan 2011–2015, and the Food and Longer Term Agriculture Sector Development Policy.¹²⁷ Budget proposals are usually submitted to the MFEP above recommended ceilings, with a view to convince the MFEP that more revenue is necessary. The process of negotiation, described above, continues until the MFEP is happy that instructions to reprioritize the budget have been followed. Notably, however, according to the International Food Policy Research Institute (IFPRI), the parameters for any reprioritizations made by the MFEP as well as for subsequent budget cutting are not clear.¹²⁸

In terms of actual allocations, for the period 2010–2015 it is estimated that the government will contribute about a quarter of the Medium Term Agriculture Sector Investment Plan. When contributions from the private sector and internally generated funds are included, the domestic contribution will be about 34 percent, leaving some two-thirds to be covered by donor partners.¹²⁹ These figures suggest that agriculture has either been earmarked as a sector for donors and NGOs to develop, or it has been decided that the sector should fend for itself. The fact that the 2011 budget allocation for the Ministry of Food and Agriculture showed a 30 percent reduction in agricultural investment against an increase in

¹²⁵ The Maputo Declaration on Agriculture and Food Security was endorsed by African Union Heads of State in July 2003. The declaration contains several decisions regarding agriculture; a prominent one being the “commitment to the allocation of at least 10 percent of national budgetary resources to agriculture and rural development policy implementation within five years.”

¹²⁶ Chairman of PIAC, address (at Multistakeholder Workshop on Oil Money Investment in Agriculture, Dodowa, Ghana, October 3, 2015).

¹²⁷ The Medium Term Agriculture Sector Investment Plan aims to achieve at least 6 percent agricultural growth annually. Government of Ghana, Medium Term Agriculture Sector Investment Plan (METASIP) 2011–2015, Ministry of Food and Agriculture, 2010.

¹²⁸ Johnson, “Understanding the Real Budget Process.”

¹²⁹ Samuel Benin, Tsitsi Makombe, and Michael Johnson, *Aid Effectiveness in Ghana: How’s the L’Aquila Food Security Initiative Doing?* IFPRI Discussion Paper 1359 (International Food Policy Research Institute [IFPRI], 2014),

personal emoluments also suggests that the government is looking to donor partners to cover the investment side while it is forced to cover salaries. The Ministry of Food and Agriculture is renowned for experiencing difficulties in justifying its budgets to the Ministry of Finance and Economic Planning (MFEP) and Cabinet, which again is suggestive of a sector lacking political clout. It consistently experiences a reduction in its allocations amid claims of an inability to execute its budget by the minister of finance. However, there may also be fungability elements, where imposed reductions are expected to be covered by an increase in donors' share of the Medium Term Agriculture Sector Investment Plan costs. Tentatively, this would explain the moving of agricultural expenditure from investment to salaries and the reliance of the Ministry of Food and Agriculture on support at Cabinet level to ensure cuts are not incurred—although donors do not always fill in the gaps left behind by government.¹³⁰

Some agricultural policies such as subsidizing fertilizer (currently by 21 percent) are specifically prioritized by the executive branch, and are, according to the Integrated Social Development Center (ISODEC), rarely contested. Still, it is significant to note that this program is besieged with challenges, ranging from large-scale smuggling for export, to delays and the politicization of distribution. According to the chairman of the Peasant Farmers Association of Ghana, every year the threat of removing the subsidy hangs high, and every year “small scale farmers have to beg to get it back”, which in 2014 actually meant that despite an Annual Budget Funding Amount allocation, the subsidy was not forthcoming.¹³¹ This shows that despite certain policies apparently ranking higher than others, they too can be cut, with the result that the inherent uncertainties of an already vulnerable sector are worsened. The dearth of consistency in support for the agricultural sector on the part of government suggests strongly that small-scale farmers do not have leverage over policy, and that there is no strong political incentive on the part of governments for long-term, serious investment in agriculture.

To recap, regarding extractive industry revenue earmarking it seems that a complicated set of rules that took a long time to be put into place has ended up (according to opponents) favoring ministerial discretion. In terms of the budget, the process of prioritization takes place as individual spending ceilings are made to control line ministries exceeding limits, but this effort does not appear to rail in overspending. In this respect the expenditure side of the budgetary process has been described as so weak and undemocratic as to be “essentially ritualistic, with limited bearing upon reality.”¹³²

¹³⁰ Johnson, “Understanding the Real Budget Process.”

¹³¹ Charles K. Nyaaba, address (at Multi Stakeholder Workshop on Oil Money Investment in Agriculture, Dodowa, Ghana, October 4, 2015).

¹³² Killick, “The Politics of Ghana’s Budgetary System.”

What stands out in this assessment of the means by which resource revenues are allocated in Ghana is that although formal mechanisms of accountability are in place, their ability to perform mandated tasks is curtailed by numerous capacity and incentive weaknesses including a legal inability to demand access to data, a lack of expertise, political constraints, conflicts of interest, a lack of autonomy, a lack of political will, and political and/or electorate fatigue. As a consequence, the legislature does not adequately monitor the implementation of policy, pursue civil society or constituent interests, or successfully reshape public policy.¹³³ More broadly, the “underdevelopment” of accountability institutions exemplifies a political structure characterized by unequal relations between a powerful executive branch and weak legislature—a theme that is dominant in most of the literature used for this study.¹³⁴

This last point is a final one that requires further exploration in this study. So far this report has documented the means by which particular purpose-built oversight institutions fail, but it has not systematically looked at the manner in which unequal relations of power between the executive and the other branches of government are effectively maintained. Because such relations seem to lie at the heart of dysfunctional accountability in Ghana, detailing these processes is the task to which this report now turns.

¹³³ Shari Bryan and Barrie Hofmann, *Transparency and Accountability in Africa's Extractive Industries: The Role of the Legislature* (National Democratic Institute for International Affairs [NDI], 2007), 10.

¹³⁴ The exception is Gyimah-Boadi and Prempeh's “Oil, Politics, and Ghana's Democracy,” which highlights Parliament's ability to exert influence.

6. ACCOUNTABILITY CONTEXT

With the 1992 Constitution of the Fourth Republic, Ghana now has a system of formal government with an executive president and parliamentary system. Thus, the 1992 constitution provides for a formal separation of powers, though it is based on a hybrid executive-legislative system, ostensibly to ensure effective and smooth relations between Cabinet and Parliament. Members of Parliament (MPs) are intended to be voted into office and afford a measure of control over the executive.

Based on the Constitution, the majority of ministers have to be members of Parliament, with the remainder being persons who are otherwise qualified to be MPs (without voting rights in Parliament). All must be appointed by the president after parliamentary approval (Article 78:1), though rejection is rare. The constitution (Article 82) permits Parliament to censure a minister though this too is rare as it requires two-thirds support from all MPs *inter alia*. In addition to the Parliament, a host of oversight institutions exist to audit the activities of the government and ensure that laws and policies are implemented as they should be.

In reality, the balance of power between the executive and legislative branches of government lies with the executive branch. The dominance of the executive is reflected in a lack of parliamentary leverage, a low level of civil society influence over lawmaking, a legislature and a judiciary prone to politicization, and a political culture of strong party loyalty that discourages internal critique.

The influence of the executive branch can be seen in its size: 20 Cabinet members, eight non-Cabinet members, 10 regional ministers, and 43 deputy ministers, totaling 81 ministers and deputies (compared to 275 MPs). This makes for a mix of centralized decision-making and fragmented areas of ministerial autonomy, with ministers only tending to answer routine questions on the house floor. In terms of the budget, the ability of Parliament to control executive spending is weakened owing to limitations on legislative powers, where the president has the exclusive right to introduce into Parliament bills that have financial or tax implications (Article 108). Oversight is also limited by the two-party system, which means that Parliament is dominated by the party of the

president, with the consequence that cross-floor processes of leverage and bargaining that could strengthen checks and balances have not developed.¹³⁵

Although Parliament has the legal authority to undertake oversight functions of the extractives sector, it is hampered by limited resources, including research capacity, support staff, and office facilities.¹³⁶ Advice given to Parliament by extractive industry committees can be colored by their composition, political and business interests, and an unequal level of expertise between committees and Parliament. There is also a history of Parliament not being informed about important extractives industry issues until late in the process (as with budgetary decisions), which is otherwise required by law, and of governments shielding negotiation processes in the name of confidentiality. The questions of whether law is actually breached in such cases, whether the need for confidentiality allows for the temporary suspension of law, or whether centralized decision-making shields nefarious dealings, are open for interpretation. Regarding oversight institutions, although numerous institutions have been created by the government, and although a number of these apply to the budget and to the governance of extractive industries, they tend to be dysfunctional and incapable of either holding the executive to account or galvanizing Parliament to do so.

IMPLICATIONS OF LIMITED ACCOUNTABILITY

In terms of the budget, the outcome of a powerful executive, democratic deficit, and weak Parliament is a divergence between formal rules and the practice of budget formulation and execution. Combined with the need for flexible budgeting, the result is that government planning and allocations are often inaccurate. Furthermore, it is common for actual expenditure not to match budget allocations. All of this, in turn, makes it difficult for the Minister of finance to exercise control and oversight, and for formal laws to be created that can cover every eventuality. Consequently, budgetary processes among ministries, departments, and agencies are incremental, based on calculated estimates and hasty guesswork, and devoid of qualified projections.¹³⁷ This, in turn, leads to prevalent over- and underspending, as well as to supplementary budgets, which further complicate the process of reconciling allocations and expenditure.

There are subsequently significant problems of money disappearing from the budget with an endemic practice of unpaid bills carried over from year to year. Tracking of nonsalary expenditure at the Ministry of Education, for example,

¹³⁵ Parliament is dominated by the two main parties, the National Democratic Party (NDC) and the New Patriotic Party (NPP). Their differences are more style than substance, with both giving full backing to market-driven growth and the principles of international financial institutions and the donor community covering economic management, rule of law, and good governance.

¹³⁶ Sakyi, Azunu, and Mensah, "Legislator Views on Knowledge and Capacity Challenges."

¹³⁷ Hutchful, "Ghana," 93.

estimated nonarrival at the intended destination at some 49 percent, while for the Ministry of Health it was even higher at 79 percent. It is unclear as to how large a part of this problem is from leakage and maladministration, and how much is a result of deviations between allocations and actual distribution.

As an example of considerable overspending without mandate, the presidency was reported as exceeding its budget allocation by approximately 100 percent in the first nine months of 2014, without parliamentary endorsement, as is law.¹³⁸ Apparently, this overspending was in part due to the cost of a large ECOWAS summit, which Ghana hosted, as well as the regional Ebola crisis. Evidence of the systematic nature of these problems comes from the reports of the Auditor General, which every year detail a large number of serious discrepancies and example after example of misappropriated funds.

Regarding oil revenues, discretionary powers, flexibility in decision-making, and manipulation of forecasts have resulted in a spread of expensive projects around the country, which have been prioritized regardless of efficiency or value for money. These projects appear to be focused more on illustrating to everyday Ghanaians that they are receiving a share of the natural resource wealth. Notably, many of these projects have not been realized. For example, large road projects (of which there were 16 from 2011 to 2013) have frequently stalled as (unrealistic) oil revenue projections do not materialize. This lack of revenue, in turn, results in costly delays, interest duties, and project debt.¹³⁹ As mentioned earlier, such dynamics also result in the Office of the President receiving a greater share of the oil revenues than was allocated to education, health, employment, youth, and sports. The lessons of the first round of prioritizations, directed by Ministry of Finance's discretionary powers, have meant that ABFA expenditure in 2014 is now limited to six ministries, departments, and agencies—down from 15 in 2013.

The apparent lack of planning and effective prioritization of investments can potentially be explained by a system of patronage and rewards within government appointments. As one respondent remarked, the short-term planning, or even, decided lack of planning in expenditure decisions, was due, at least in part, to frequent changes in the National Development Planning Commission, where senior positions were politicized.¹⁴⁰ For opponents, the

¹³⁸ The excess was approximately \$13 million ("Summon Min. of Finance to Justify Extra funds to Executive," *Daily Graphic*, December 18, 2014. See also Department for International Development (DFID), *Understanding the Politics of the Budget: What Drives Change in the Budget Process?* Briefing: A DFID Practice Paper (DFID, 2007), 7. The Ghana Air Force owed the Tema Oil Refinery some \$6.7 million in late 2004 with an interest rate of 45 percent annually. See Hutchful, "Ghana," 90.

¹³⁹ See ACEP/Adam, Amewu, Abanga, Boakye, and Salifu, *How a Good Law May Not Stop Oil Money from Going Down the Drain*, 27.

¹⁴⁰ Kusi, interview, January 16, 2015.

National Development Planning Commission is where the elite are put out to pasture as a soft advisory institution to government. The commission's tasks include analyses of macroeconomic and structural reform options, proposals for multiyear rolling plans, projects for the protection of the environment, and monitoring and evaluation of development policies, programs, and projects.

In terms of mining, a lack of oversight on licensing agreements, high levels of ministerial discretion, and weak horizontal accountability mechanisms have resulted in major conflicts of interest. These have included, for example, a former chairman of the Parliament Select Committee of Minerals and Energy (which has the task of examining mining companies prior to the ratification of agreements) owning a quarry at the time, and another member owning a diamond mine.¹⁴¹ Similarly, during parliamentary debates in October 2008, it came to light that some 21 mining companies had had licenses granted by the Ministry of Lands and Natural Resources, and had been in operation for up to 15 years previously, without ratification of their licenses by Parliament, as demanded by law.

Regarding transgressions of the variety just described, there is thought to be little in the way of effective justice. The courts have a considerable backlog of all types of cases, a situation fostered by complex configurations of pluralist legal orders. This situation often means that cases are adjourned, delayed, and appealed through higher-level institutions for years.¹⁴² One result is that it is rare for public servants to be prosecuted for maladministration.

UNDERSTANDING A PERSISTENT LACK OF ACCOUNTABILITY

The centralization of power within the executive, clearly a significant challenge to accountability institutions in Ghana, is not an easy issue to address. The country's political structure and the dominance of Accra in the process of decision-making over policy and the allocation of resources originated within the colonial formulation of the state and was further entrenched by the 21 years of military rule that the country subsequently experienced. This structure, reflecting the colonial model where control over decision-making and resources was set up based on a logic of extracting resources from the hinterland and moving them through the capital back to Europe remain in place today with political and economic power rooted in the south, while a weaker political and economic north is dependent on the trickle down of resources from wealth-generating hubs. The corollary is that despite democratization, decentralization, and liberalization, the political economy remains basically unchanged: peripherally situated elites look

¹⁴¹ Ayee, Søreide, Shukla, and Le, *Political Economy of the Mining Sector in Ghana*.

¹⁴² In the case of land disputes, see Rachel Spichiger and Paul Stacey, *Ghana's Land Reform and Gender Equality* (Danish Institute for International Studies [DIIS], 2014).

to the center in the hope of securing the redistribution of centrally controlled resources to their areas (Section 6 provides for more details). At the same time, the redistribution mechanisms legitimize the centralization of decision-making with maximal control over the economic resources. Politically, this means that local elites are generally detached and unaccountable to ordinary citizens and are overwhelmingly focused on upward mobility.¹⁴³ Consequently, the retention of centralized control over economic resources is the most politically viable option from the perspective of the executive.

Considering the persistent weakness on the part of Parliament to hold the government to account—or to force it to exercise restraint—the problem is multifaceted. First, it is worth noting that this situation is likely a partial outcome of the aforementioned period of military rule, which hindered the development of the legislature. Second, Parliament is characterized by strong levels of party loyalty, a possible product both of cultural norms such as political cultural psyche of reverence to authority and older, “Big Men,” and of skewed incentives. On the part of skewed incentives the issues are twofold.

First, because MP candidatures are decided through party primary elections that are characterized by patronage spending and vote buying, aspirants have to form relationships with party members who then link them with voters via local party offices.¹⁴⁴ The process is demand driven; executives will strive to ensure the candidature of their favorite while providing incentives for opponent(s) to drop out. The outcome is that Parliament as a representative organ is compromised, as the ability to mobilize wealth and top-down support become defining factors and elections are perceived to favor certain individuals. The imposition of candidates from above can also marginalize local-level members and breed opposition. Party executives also play a central role in the vetting and selection of candidates (where national and constituency executive members have veto rights). Vetting can avert primary contests while enabling the competition to continue. Vetting typically takes place in resource-weak (rural) areas. Here, the wealthiest candidate will normally gain the executive’s support while contestants will attempt to influence voting with the provision of materials on election day.¹⁴⁵ In this way, good connections, loyalty to senior figures, and the ability to generate funding, as well as the ability to secure support within the party more generally, become the *sine qua non* for a successful candidature and potential election to Parliament. Such alliances and obligations are carried into and reproduced in

¹⁴³ Andrew Shepherd and Emmanuel Gyimah-Boadi, *Bridging the North South Divide?*, Background Paper for the 2005 World Development Report (World Bank, 2004), 9.

¹⁴⁴ Nahomi Ichino and Noah L. Nathan, “Do Primaries Improve Electoral Performance? Clientelism and Intra-Party Conflict in Ghana,” *American Journal of Political Science* 57, no.2 (2012): 428–41.

¹⁴⁵ Cyril K. Daddieh and George M. Bob-Milliar, “In Search of ‘Honorable’ Membership: Parliamentary Primaries and Candidate Selection in Ghana,” *Journal of Asian and African Studies* 47, no. 2 (2012).

Parliament where party loyalty translates to support for government agendas and the negation of any executive oversight mechanisms.

Second, once they are in Parliament, parliamentarians have few incentives to dissent against the will of the party because the ruling party enjoys the majority, and up-and-coming ruling party MPs aspire to become ministers. The Constitution also forbids “crossing the floor”¹⁴⁶ (Article 97) with the consequence being the loss one’s seat. Thus, there is a greater incentive for ruling-party MPs to exhibit party and government loyalty, and to develop within party ranks instead of airing critiques and seeking to hold their government to account through the formal set of rules.

These factors together shape a winner-takes-all parliamentary system that lacks effectiveness as an institution of checks and balances on the executive.¹⁴⁷ The weakness of Parliament is also reflected in the fact that there is no history of the pursuance of private member bills (bills introduced by individual MPs rather than by individuals acting on behalf of the executive branch).¹⁴⁸ The frail social contract between the machinery of government and the citizenry (besides at election times) is evident in domestic extractive industry revenue-sharing formulas as well as in agreements made between international oil and mining companies and the government. The making of revenue-sharing agreements, both in the past and present, has been a predominantly top-down, closed affair, sanctioned first by the executive, and passed by a loyal parliamentary majority. The weakness of Parliament was described by a senior member of an established civil society organization in the following way:

We are also now seeing increased collusion in Parliament between the majority and minority over, for instance, oil contracts, where [historically] we have not seen any opposition at all. ... [A]s you know, elections are very tight here, and either party can win at any time, so it’s like a gentleman’s agreement “you do it now, and when we come we do” ... and you can see that collusion also being translated into opposition to transparency frameworks. Currently, there is a bill in Parliament on how to license oil blocks, and we are asking for some transparency standards, and you have both the majority and minority strongly opposed to that. They try to water it down. ... They, as MPs, have lost confidence in their own parliamentary platform.¹⁴⁹

In terms of oversight, key state institutions that have the responsibility to oversee executive decisions related to economic and political governance are considered

¹⁴⁶ Crossing the floor here refers to leaving the party one is elected to, to join another party.

¹⁴⁷ Sakyi, Azunu, and Mensah, “Legislator Views on Knowledge and Capacity Challenges.”

¹⁴⁸ Former minister, interview, December 20, 2014.

¹⁴⁹ Senior member of a civil society organisation, interview.

generally dysfunctional owing to the fact that the Office of the President appoints their leaders.¹⁵⁰ Indeed, it is established constitutional practice that all non-civil service public office positions are vested in the president.

In general, oversight institutions are rendered dysfunctional by the president appointing their leadership, by limiting their access to funding, by not affording them prosecutorial powers, and by limiting their investigative capacity. The Commission on Human Rights and Administrative Justice (CHRAJ), for example, does not have prosecutorial powers and has to depend on the attorney general, who is also a member of Cabinet in the capacity of minister of justice.¹⁵¹ This configuration raises the likelihood of disincentives against possible prosecutions of fellow senior party colleagues, and it has led to calls for the separation of the office of attorney general from the Ministry of Justice. In these ways, the effectiveness of oversight intuitions simply become reliant on other institutions, such as Parliament, which is compromised for the reasons just mentioned.

Besides this predicament, there is widespread belief that the president has excessive discretionary power in the appointment of judges. It is also commonplace to allege executive interference in prosecutions.¹⁵² There is also evidence of the capture of the judiciary by political parties and of political party influence over the appointments of judges. Structurally, networks of patronage between the judiciary and executive develop owing to the winner-takes-all system and single-party dominance of government, and to the inability or unwillingness of Parliament to rein in such practices.¹⁵³ There is an “apparent high incidence of party political appointments to both the Ministry of Justice and Attorney General’s Department, ... the Judicial Council, the Commission for Human Rights and Administrative Justice and the Serious Fraud Office.”¹⁵⁴

At all levels, courts are found to be “relatively depoliticised” as the Judicial Council and Bar Association can “make recommendations for both the nomination and promotion of judges and hence check the appointing powers of the president.” Nonetheless it has been noted that politicization is greatest at the center of ministerial bureaucracies where positions such as chief directors and deputies are often politically influenced. Manipulation at lower levels, such as appointments of heads of sections, is also common, although it may contravene

¹⁵⁰ Such institutions include the Serious Fraud Office, Attorney General’s Office, the Commission on Human Rights and Administrative Justice (CHRAJ), the Parliamentary Select Committee on Mines and Energy, and Supreme Court judges.

¹⁵¹ This formula is not unusual in Commonwealth countries.

¹⁵² AfriMAP, the Open Society Initiative for West Africa (OSIWA), and the Institute for Democratic Governance, *Ghana: Justice Sector and the Rule of Law* (OSIWA, 2007).

¹⁵³ Petr Kopecký, “Political Competition and Party Patronage: Public Appointments in Ghana and South Africa.” *Political Studies* 59 (2011): 713–32.

¹⁵⁴ Kopecký 2011:723.

relevant law.¹⁵⁵ The view that the judiciary is compromised is one that is shared by the general population, and it is among the conclusions of the 2014 *Afrobarometer* report on Ghana, indicating that there is presently not much public faith in the institution.¹⁵⁶ Generally, it is perceived as slow, expensive, potentially corrupt, and illegitimate.

Finally, in addition to the problems of political control and incentives described above, it appears that, to some extent, capacity problems and technical issues also play a role in undermining accountability. For example, as mentioned above, existing discretion, enshrined in the law, which empowers the executive to make decisions over the use of oil wealth, has been exacerbated by contestation over how the law should be interpreted. Despite the efforts in Ghana to generate an effective legal framework for managing oil revenues, part of the problem is thought to be that the process of establishing a solid legal framework to manage extractive industry revenue flows was one step behind the actual flow of revenue. The result is that oil revenues are used to satisfy a relatively narrow societal group of oil and gas interests. As one informant explained:

[It] is clear in my mind that the intent of Act 815 was to try to bring transparency in the revenue management of oil and gas. There is no question in my mind. But if you know the history of legislation, the commission should have been set up even before the law came in. But there was no petroleum commission. We were dealing with all the production law, but because revenues were going to accrue, we needed to do things quickly. In terms of sequence it was wrong, but we should have first made the commission, then the production, then the oil. But when the oil was flowing the production law was not yet forthcoming ...¹⁵⁷

Having outlined the processes by which revenues are shared and budgets formulated, as well as the accountability failings within these processes, it is necessary to briefly reflect on the extent to which decentralization has been effective in Ghana. This is necessary in order to determine the extent to which local government has a role to play in affecting budget priorities. As has been mentioned, certain revenues, including those from mining, are allocated directly to the local level, while disbursements from the Consolidated Fund will also contain some contributions from mining revenues. Understanding the extent to which autonomy over decision-making has been handed to local governments is therefore important. Finally, much ambition around efforts to wrest control of the budget from the executive has focused on the possibility for participatory budgeting at the local level. In order to assess such possibilities, it is therefore

¹⁵⁵ Kopecký 2011

¹⁵⁶ See <http://www.afrobarometer.org/countries/ghana-1>

¹⁵⁷ Hon. Anthony Akoto Osei, member of Parliament, interview, January 20, 2015.

important to explore the structures, capacities, and incentives operating at these scales.

7. A NOTE ON DECENTRALIZATION

The present-day system of local government in Ghana is traceable to the colonial policy of indirect rule. Representation on the basis of ballot box was introduced in the 1950s but dismantled in the 1960s when Kwame Nkrumah sought to centralize power under a one-party state. The contemporary system is based on the 1988 Local Government Act (Provisional National Defence Council, PNDC law 207), which created a five-tiered pyramidal system of nonpartisan local government, with elections every four years. The law created 110 metropolitan, municipal, and district assemblies. These are the most important local government institutions, below which are district councils, urban councils, zonal councils, town councils, area councils, and unit committees. District assemblies were given a wide range of some 85 functions covering revenue generation, administration, planning, infrastructure, and security.

Besides the formal elections, there is a general democratic and participatory deficit within local government institutions. This deficit stems from a lasting tension among the center of wanting to simultaneously deepen democracy and gain legitimacy (particularly in Ghana via the incorporation of the chiefs), and being concerned over a loss of control by the center, the atomization of regions, and certain underdeveloped areas not being able to financially sustain themselves.

The challenge of balancing central control and local autonomy continue to shape the politics of local participation today. The result is a complex formula for representation, power sharing, influence, and accountability that has been implanted into existing local institutions of power and authority. In this respect, a typical assembly consists of (1) locally elected assembly members chosen on the basis of universal adult suffrage (one for each ward, demarcated by the electoral commission), (2) an executive district chief executive appointed directly by the president,¹⁵⁸ (3) the constituency MP or MPs who have a nonvoting membership, (4) other members not exceeding 30 percent of the total membership of the Assembly appointed by the president in consultation with the traditional authorities and other interest groups in the district,¹⁵⁹ and (5) a presiding member

¹⁵⁸ The DCE has to have the prior approval of a minimum of two-thirds of the members of the Assembly present and voting at the meeting before formal appointment, and he or she can be removed when there is a vote of two-thirds of all members against him (or her).

¹⁵⁹ This criterion is from the 1993 Local Government Act (Act 462), Section 5(1)d.

elected by the assembly members with two-thirds majority of all assembly members.

Such a formula affords the central government a relatively firm hold on power through control over a third of assembly members and restrictions on locally chosen actors' ability to assume key decision-making positions. Elected assembly members are often unable to muster the majority needed to remove a district chief executive, leaving this post effectively open to presidential appointment. The loyalties of the assembly executive are generally biased toward their appointers at the center, and not the locality (Section 6). This means the locally placed executive satisfies their own needs first with a deficit of downward accountability, which in turn justifies continued direction from the center.¹⁶⁰

Concerning traditional authorities, the consultative role they can play suggests their interests are compatible with assembly members as well as the executive. In practice however, many chiefs enjoy more influence than their consultative position intends, a reflection of their revered position in the community and their status as professed owners of the land the district is situated upon. The cultural reverence for chieftaincy has meant there is a long history of chiefs appropriating revenue earmarked for either the stool or for the benefit of local communities as personal property and a source of personal income.¹⁶¹ In this respect, authority is frequently contested between elected individuals and the chiefs, with those contests taking place in a hybrid mix of formal and informal spheres.

Regardless of such contests and the extent to which the executive maintains power over decentralized institutions, it worth noting that the revenue available to these groups is relatively small. The small amount of money from mining revenues has already been mentioned as has the fact that it includes no requirements for local consultation in determining spending priorities. Similarly, no portion of oil revenues is earmarked for local government. Regarding access to centralized revenues, under the current formula, salaries and pensions (the largest posts), as well as operational and administrative expenses, are all covered centrally.¹⁶² This leaves little funding available for local discretion and further means the loyalties of locally placed public sector staff, including customs officers, police, doctors, magistrates, and teachers, are directed toward the center rather than local government.¹⁶³

¹⁶⁰ Shepherd and Gyimah-Boadi, *Bridging the North South Divide?*, 9.

¹⁶¹ Standing and Hilson *Distributing Mining Wealth to Communities in Ghana*, 7.

¹⁶² Maaregu Habtermariam Kazentet, "An Assessment of Internally Generated Fund and Its Contribution for District Development Expenditure: A Case of Asutifi District, Ghana" (master's thesis, Kwame Nkrumah University of Science and Technology, Kumasi, Ghana, 2011).

¹⁶³ Kazentet, "An Assessment of Internally Generated Fund and Its Contribution for District Development Expenditure."

Finally, even if one assumed both the willingness on the part of the local government to respond to the interest of the local populations and the resources available to spend, local challenges would remain in terms of generating a functional local polity. These challenges include low levels of education, literacy, and numeracy rates in outerlying areas. Although the participation of women in local government institutions appears to be increasing in some areas, it is still very low, averaging between only 5 and 14 percent. Challenges in this respect include a range of local sociocultural norms, including women's lack of confidence in confronting men, intimidation from powerful men, women's domestic workload, traditions of obeying men, polygamy, and the notion that "politics" is widely considered a male activity.¹⁶⁴ Undoubtedly, these features of rural life, which also impact negatively on efforts to improve women's access to land, would pose similarly serious challenges to local engagement over the investment of locally available resources.¹⁶⁵

With all of the above in mind, a final task for this research is to explore the extent to which civil society has the capacity to affect revenue collection, allocation, and accountability.

¹⁶⁴ Charles Gyimah and Edwin S. Thompson, "Women's Participation in Local Governance in Ghana: The Case of Nadowli District in the Upper West Region," *Studies in Gender and Development in Africa* 1 (2008): 58–77.

¹⁶⁵ For an analysis of gendered access to land, see Spichiger and Stacey, *Ghana's Land Reform and Gender Equality*.

8. OPPORTUNITIES FOR CSO INFLUENCE

Prior to reflecting on the extent to which it is thought that civil society is able to influence revenue allocations and accountability structures, it is first important to recognize the methodological difficulties in trying to assess this process. Naturally, CSOs and NGOs have an interest in taking credit for any policy changes that overlap with their own objectives. Likewise, government may give nonstate actors some credit for certain policy outcomes even though these may well be based on an entirely different set of dynamics that are obscured from immediate view. Conversely, any apparent neglect of participatory inputs that, for example, might be evident in the budget need not necessarily reflect government not wanting to support particular priorities—as civil society will typically claim. Instead, it may be the result of a range of other factors. Therefore, this report cannot conclusively state whether participatory inputs drive resource allocations and accountability reforms; this report advises that such relationships be the subject of further research.

The above notwithstanding, it can be noted that civil society has experienced some success in influencing the governance of extractive industries. It is clear, for example, that civil society was able to influence the governance of the oil sector in a way that was not apparent in the mineral sector. In this respect, it is popularly understood that pressure from civil society resulted in Ghana joining the EITI,¹⁶⁶ and that civil society played an important role in shaping the Petroleum Revenue Management Act (PRMA), especially the formation of the Public Interest and Accountability Committee (PIAC). While these examples certainly highlight the potential capacity for civil society to shape these processes, a closer look also highlights some of the limitations. For example, when one considers that GEITI has difficulty in fulfilling its mandate, that it lacks funding, has no legal backing, and improves Ghana's international reputation, then the claim of government bowing to civil society pressure is less certain.

In terms of the writing of the PRMA and the creation of PIAC, it seems that civil society has had some important successes—especially since the government was initially opposed to PIAC's formation. Not only does civil society appear to

¹⁶⁶ See, for example, Freida Quagraine, "The Invisible Eyes and Ears—Civil Society and Their Role in Extractive Sector Revenue Management in Ghana," *Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP) Annual Review* 16 (2013), <http://www.dundee.ac.uk/cepmlp/gateway/?news=32428>.

have been instrumental in creating these institutions, PIAC has, for example, been able to achieve some modest successes under very trying circumstances (mentioned above). Despite these successes, the limited powers afforded to PIAC, along with its history of inadequate resourcing, highlight the difficulties civil society has had in trying to rein in the established power of the executive. The same can be said for the PRMA. While it is impossible to imagine what revenue allocations would have looked like without the legislation in place, it seems reasonable to assume that this legislation has resulted in at least marginal improvements in the oversight of the country's oil revenues. As with PIAC, however, the manner in which the executive has been able to circumvent controls on the allocation of revenues to different funds suggests that the challenge for reform-minded actors within civil society is ongoing.

Looking at budget processes, as interactions between CSOs and government are generally informal and *ad hoc*, it is difficult to accurately assess the effects, if any, that CSOs have on public administration and political decision-making regarding the shaping of budgetary prioritizations. However, the immediate impression is that participatory influence over budget allocations is marginal and potentially coincidental. For example, considering that many nonstate actors focus on “soft” agendas relating to education and health, it is reasonable to assume that if they did enjoy meaningful leverage, these sectors would take up a bigger place in budget priorities and investment planning.

Taking SEND¹⁶⁷ as an example, Dogbe writes that through long-term commitment with multiple local and global stakeholders, this coalition has successfully influenced education and health “policies and programmes in favour of the poor and marginalized.”¹⁶⁸ This does not immediately fit, however, with budgetary allocations to these sectors which, in recent years, have either stagnated or declined as a percentage of GDP to levels that are lower than those allocated by similar lower-middle-income countries.¹⁶⁹

Reconsidering the above, it may be the case that CSO pressure on government, rather than increasing spending, has meant cuts are less than they otherwise would have been. Evidence for such a claim is obviously hard to sustain, but might include, for example, successful campaigning to keep agricultural modernization as an Annual Budget Funding Amount (ABFA) prioritization for 2014–2017. That said, it is worth noting that the budgetary allocation to the

¹⁶⁷ Social Enterprise Development Foundation (SEND) is a non-governmental organization working across West Africa with chapters in Ghana, Liberia and Sierra Leone. The organisation focusses on issues of participation, equality, openness and empowerment.

¹⁶⁸ These programs and policies include the heavily indebted poor countries' debt relief, the National Health Insurance Scheme, the School Feeding Programme, and the District Assembly Common Fund (DACF). Dogbe, *Follow the Money*, 25–26.

¹⁶⁹ ACEP, *Three Years of Petroleum Management in Ghana: Transparency without Accountability*, 16.

health sector of between 10.5 and 12.5 percent falls short of the Abuja Declaration figure of 15 percent and fits ill with CSO claims of meaningful leverage.

Such claims are further undermined when one considers that the stagnation of health allocations from the national budget have coincided with government policy that has sought to institutionalize the use of (districts') internally generated funds and user fees as a means to cover a host of service costs, including education. In this respect then, it would seem that ISODEC, a leading actor in education that has contributed to several bills, has had limited effect, at least regarding its principal aim, which for years has been to sustain the central role of the state in the provision of such services.¹⁷⁰

In conclusion, despite generally free and fair elections and despite peaceful transfers of power from one government to the next since 1996,¹⁷¹ Ghana's high levels of poverty, blatant developmental-geographical divides, and widening income disparities, do not appear to have generated cross-cutting economic, political, or social interest groups with proven records of shaping budgetary decisions.¹⁷² Numerous factors appear to limit the formation of influential broad-based civil society organizations, including:¹⁷³

- A relatively low level of civil society involvement in the democratic process, besides voting¹⁷⁴
- The hierarchical structure of society/reverence for authority/gender bias/age bias
- A relatively closed political culture¹⁷⁵
- Relatively high levels of ethnic diversity¹⁷⁶

¹⁷⁰ These services include, for example, the Ghana Education Trust Fund (GETFUND) for education infrastructure, and the National Health Insurance Fund.

¹⁷¹ Lindsay Whitfield, "'Change for a Better Ghana': Party Competition, Institutionalization and Alternation in Ghana's 2008 Elections," *African Affairs* 108, no. 433 (2009): 621–41.

¹⁷² The role of the recently formed Occupy Ghana constellation remains to be seen, but the impact of civil society does not appear to have changed noticeably over the last decade. See, for example, Shepherd and Gyimah-Boadi, *Bridging the North South Divide?*, 3.

¹⁷³ Notably, all of these factors are stated on a relative basis. In this regard, compared with many African democracies, Ghana has a relatively high level of CSO participation, has an open political culture, and has managed its ethnic tensions successfully. That said, compared with many other countries in the world, these issues still present as barriers to civil society leverage. Suggestive of this is the fact that Ghana ranks one point above average on the Civicus Enabling Environment Index (EEI) in 2013: <http://civicus.org/eei/>.

¹⁷⁴ Dogbe, *Follow the Money*, 7.

¹⁷⁵ Paul Stacey, "Political Structure and the Limits of Recognition and Representation in Ghana," *Development and Change* 46, no. 1 (2015), and Jeffrey W. Paller, "Informal Institutions and Personal Rule in Urban Ghana," *African Studies Review* 57, no. 3 (2014).

- Historical and contemporary institutionalization of centralized decision-making
- Technical nature of public financial management, which demands expertise¹⁷⁷
- Difficulties in accessing or inability to access relevant data to monitor/evaluate/advise on budgetary issues
- An often overt CSO focus on singular issues rather than holistic analysis
- CSO coalition members having unrealistic expectations¹⁷⁸
- Politicization/accusations of politicization of individual CSOs¹⁷⁹
- Short-term (donor) funding of CSO budgetary studies¹⁸⁰
- Competition within CSO coalitions to capture funds to pursue own agendas
- Loss of synergy owing to competition between CSOs/NGOs over funding

Although there are indications that civil society has been able to leverage influence over the use of extractive industry revenues in the budget, it is difficult to know whether these are simply coincidental or indications of major civil society impact. The case for major direct influence is undermined by the fact that areas of civil society concern tend not to receive robust, recurrent prioritization in terms of funding. It seems then that in the Ghanaian context, civil society is working in a highly constrained environment wherein executive control over the budget is significant. In this respect, potential successes of civil society campaigning are certainly notable, even if they are not clearly significant.

The above notwithstanding, certain ministries may be more open to influence, ideas, and suggestions from civil society than others, as is the case of the Ministry of Local Government and Rural Development (MLGRD). The extent to which this openness is a reflection of the particular ministry or is the result of the considerable amount of attention given to local government and rural development by an army of donors and NGO projects is hard to tell. That said, the deputy minister at the MLGRD described the situation as follows:

¹⁷⁶ Christian Lund, "'Bawku Is Still Volatile': Ethno-Political Conflict and State Recognition in Northern Ghana," *Journal of Modern African Studies* 41, no. 4 (2003): 587–610; and Catherine Boone and Dennis Kwame Duku, "Ethnic Land Rights in Western Ghana: Landlord-Stranger Relations in the Democratic Era," *Development and Change* 43, no. 3 (2012): 671–93.

¹⁷⁷ On this topic, it's interesting to note that at the time of writing an intense media spat was playing out between senior figures at IMANI Center for Policy and Education and the Controller and Accountant General's Department (CAGD) over formal qualifications and the competence to pass judgment on accounting mechanisms.

¹⁷⁸ See Dogbe, *Follow the Money*.

¹⁷⁹ For example, the Committee for Joint Action (CJA) aligned to the NDC, and the Alliance for Accountable Governance (AFAG) aligned to the New Patriotic Party (NPP). Dogbe, *Follow the Money*, 23.

¹⁸⁰ Dogbe, *Follow the Money*, 30–31.

We have been able to strike a very good balance with our donor partners in [certain] areas and some cases with CSOs. Some CSOs are here already.... I have just started working on something with an NGO on water provision. This is what I am doing on paper together with them, so that we can improve upon water and sanitation in the rural areas. So we have great collaborations, and we try as much as possible to depend on them when we are drafting policies and programs for such things. Exactly that is why we wanted to develop those four problematic areas over the period. We have seen that in Ghana we have shortfalls in potable water provision, we have shortfalls in rural housing, we have shortfalls in job creation. A lot of our youth are all migrating to the urban centers, but we think when we create small micro industries and enterprises in the rural areas, they will stay there. So it is all as a result of inputs, we are looking at past policies and programs that made us determine these problematic areas, and with our donor partners, we are all interested in these four areas so we have a very smooth working relationship with them.¹⁸¹

It should also be recognized that there is an increasing number of politically connected policy think tanks¹⁸² that are able to provide the formal political system with high-quality data on a wide range of issues from which informed policy decisions can be made, and which might effectively influence the budget. Their level of competence and possible influence lies with their founders and partners often having occupied very high positions in Ghanaian political and economic society, prior to think tank work. An example is the Institute for Fiscal Studies, founded by Dr. Kwabena Duffuor who was a former minister at the MFEP and former governor of the Central Bank of Ghana. Still, it is outside the scope of this report to assess accurately these relationships and the conditions that influence the impact of such civil society institutions on public policymaking.¹⁸³ The role of think tanks is something for future research, given that they do not fall under the traditional umbrella of civil society organizations, pressure groups, or NGOs.

Finally, looking at the impact of civil society on improving governance more generally, the evidence again suggests that successes have been few and far between, with success or failure determined by the particular idiosyncrasies of the individual cases, while the effects on governance structures remains limited.

¹⁸¹ Hon. Nii Lantey Vanderpuye, deputy minister, Ministry of Local Government and Rural Development, interview, January 20, 2015.

¹⁸² The use of “think tanks” here is not to suggest that the work has excluded looking at the influence of other think tanks. Instead the term is being used to describe those specific think tanks where channels of influence through established political connections might be significant.

¹⁸³ Notable think tanks include the Institute for Democratic Governance (IDEG), the Institute of Economic Affairs (IEA), the Ghana Centre for Democratic Development (CDD), the Legal Resources Centre (LRC), the Integrated Social Development Centre (ISODEC), and the Institute for Fiscal Studies (IFS).

A good example is the professed success of the Committee for Joint Action (CJA) that uncovered gross maladministration of the Ghana School Feeding Programme (GSFP) in 2007, which resulted in drastic changes and dismissals of senior staff. The apparent success in this case appears to be driven by the persistence of the campaign, by the fact that it concerned education, and by the involvement of a major donor. In addition, the case raised a considerable amount of media, political, and public attention, partly because the scandal took place less than half a year before presidential elections, at a time when the incumbent New Patriotic Party (NPP) was behind in the polls.

The degree to which this case has served to improve accountability, however, is less clear. In this respect, it appears that the removal of the senior public officials by then President John Kufuor was a price worth paying to reduce damage.¹⁸⁴ Notably, after the scandal, Kufuor re-established control with the appointment of new heads, isolated government from the maladministration at GSFP, and gained the support of civil society for taking firm action. Besides the immediate shakeup, however, serious anomalies and fraudulent activities continued—or started anew—at GSFP when just 18 months later, a further three deputies were removed (these departures received much less attention). This incident suggests that even as the program was undertaking much called for “changes” under watchful CSO eyes, the institutionalized incentives and opportunities for maladministration that initially gave rise to the case continued unabated.¹⁸⁵ In this respect, there are present-day indications that the GSFP still experiences sporadic maladministration. In December 2014, for instance, the district chief executive of Jirapa District was removed from office by the Ministry for Local Government and Rural Development after persistent allegations and complaints by youth groups about the diversion of GSFP funding and the selling of related contracts.¹⁸⁶ It is beyond the scope of this report to determine whether the Jirapa District incident is an isolated one, but it is certainly indicative of the uphill challenges CSOs face in bringing about serious institutional change within public institutions.

Another recent example of success is that of the former NDC attorney general—turned-whistleblower Martin Amidu, who has won three Supreme Court cases resulting in the retrieval of funds to state coffers. Although Amidu’s examples show how the judiciary can be effective in punishing fraud, such cases are

¹⁸⁴ The New Patriotic Party (NPP) was ahead in the polls by October 2008, suggesting that the medium-term political cost of Kufuor’s move was indeed negligible.

¹⁸⁵ Kwame Frimpong, “Gov’t Is Mishandling School Feeding Programme—CJA,” Politics, Peacefmonline.com, September 24, 2009. <http://elections.peacefmonline.com/pages/politics/200909/27514.php>.

¹⁸⁶ Naa Sakwaba Akwa, “NDC Youth Welcome Decision to Remove DEC from Office,” Myjoyonline.com, December 5, 2014, <http://www.myjoyonline.com/news/2014/December-5th/ndc-youth-welcome-decision-to-remove-dec-from-office.php#sthash.ogittrua.dpuf>.

exceptional in that success demands that a centrally placed and powerful figure has the courage to step forward.¹⁸⁷ Again, it's difficult to assess the extent to which such actions have forced meaningful change within public institutions.

When examining cases of corruption in Ghana, what stands out is that they cover all corners of public administration—from high to low, traversing multiple ministries, departments and agencies—and single out individuals rather than dysfunctional institutions. Such cases rarely come to light if it were not for tip-offs or whistleblowers, or continual pressure from civil society and the media. This observation suggests strongly that accountability mechanisms within and between public institutions remain wanting, or are nonexistent.¹⁸⁸

Finally, in looking at the capacity of civil society to identify maladministration within the budget, through efforts to track the flow of resources, the case is again ambiguous. A review of 16 different follow-the-money efforts in Ghana suggests that although the budget can be analyzed at the national level¹⁸⁹ (in terms of allocations, for example), efforts to follow the money are limited by the fact that the budget system in Ghana is hard to understand,¹⁹⁰ with information on local budgets very difficult to come by.¹⁹¹ Problems in this regard include (1) cases of the subnational budgets and subsector budgets not being broken down (despite the former being required by law),¹⁹² (2) the use of in-kind payments, which cannot be tracked and reconciled with the budget,¹⁹³ (3) a lack of records or a

¹⁸⁷ One whistleblower declined to be interviewed for this project with the remark, “Human rights in this country are not what they should be.” (Anonymous, interview, January 18, 2015.)

¹⁸⁸ Dogbe writes that payments to nonexistent people amounts to over \$31 million annually (Dogbe, *Follow the Money*, 32). An audit of the Ghana Education Service wage bill revealed 3,298 potential duplicate employees. See “Fix Messy Mechanised Payroll,” *Daily Guide*, January 15, 2015.

¹⁸⁹ ISODEC, *Benefit Incidence Analysis for the Education, Health and Water Sector in Ghana: Strengthening Institutions for Public Expenditure Accountability* (2009); ISODEC, *Programme Budgeting in the Education, Health and Water Sectors in Ghana: Strengthening Institutions for Public Expenditure Accountability* (2009); ISODEC-UNICEF, *Analysis of the 2010 National Budget and Economic Policy Statement of the Government of Ghana to Determine Gaps and Opportunities for Women and Children* (2010); and ISODEC, *Preliminary Analysis of Education Sector Expenditure Allocation for 2013*, Budget Brief (2013).

¹⁹⁰ Xiao Ye and Sudharshan Canagarajah, “Efficiency of Public Expenditure Distribution and Beyond: A Report on Ghana’s 2000 Public Expenditure Tracking Survey in the Sectors of Primary Health and Education,” *Africa Region Working Paper Series* 31 (Washington, DC: World Bank, 2002).

¹⁹¹ ISODEC, *Benefit Incidence Analysis for the Education, Health and Water Sector in Ghana*.

¹⁹² ISODEC, *Benefit Incidence Analysis for the Education, Health and Water Sector in Ghana*.

¹⁹³ Ye and Canagarajah, “Efficiency of Public Expenditure Distribution.”

lack of access to records¹⁹⁴ at service delivery points, which makes budget tracking impossible.

The lack of records is principally thought to be a capacity problem; multiple reports identify problems of bad filing practices.¹⁹⁵ These practices were thought to be driven in part by high turnover rates among staff and directors, which meant that records were lost or maintenance practices changed.¹⁹⁶ In terms of accessing records, cases of staff refusing to release records was thought to be a cultural artifact by which administrators either “keep their heads down” or simply conform to an established culture of secrecy.¹⁹⁷

Successful efforts to reconcile budgetary allocations with expenditures were found to be reliant on reasonable record keeping, although it is unclear what exactly drove practices of good record keeping compared to cases of poor record keeping. Issues of access to records were occasionally overcome by getting buy-in from senior officials within the ministry—often in form of a letter - which could be shown to local administrators.¹⁹⁸ Likewise, offering assurances that the work was not an audit, and ensuring cordial relations between NGO staff and government officials proved to be important.¹⁹⁹

Finally, it should be noted that the intention of these efforts to “follow the money” was often to make recommendations that would allow for the money to be tracked more effectively in the future, not to generate some form of accountability response in cases of maladministration.²⁰⁰ On the point of maladministration, it should also be noted that in ways similar to what has been mentioned above, even where major maladministration was apparent—as in the finding of large numbers of ghost employees being on the payroll—achieving any sort of response from the government often proved difficult.²⁰¹ In this respect, it is possible that efforts aimed at “following the money” need to rethink their theories of change in terms of how they intend to affect accountability. In this regard, it

¹⁹⁴ Edward Ampratwum, Daniel Armah-Atto, and Maxwell Agyei Ashon, *Public Expenditure Tracking Survey in Education: Tracking Possible Leakages in the Supply and Distribution of Textbooks in Public Primary Schools in Ghana*, Research Paper 20 (CDD-Ghana, 2012); and Edward Ampratwum and Daniel Armah-Atto, *Leakages in the Supply and Distribution of Core-Textbooks in Public Primary Schools in Ghana*, Briefing Paper 11, no. 3 (CDD-Ghana, 2012).

¹⁹⁵ Edward Ampratwum and Daniel Armah-Atto, *Public Expenditure Tracking Survey in Education: Tracking Capitation Grant In Public Primary Schools In Ghana*, Research Paper, Ghana Center for Democratic Development (CDD) 19 (CDD-Ghana, 2010).

¹⁹⁶ Ampratwum, Armah-Atto, and Ashon, *Public Expenditure Tracking Survey in Education*.

¹⁹⁷ Ampratwum, Armah-Atto, and Ashon, *Public Expenditure Tracking Survey in Education*.

¹⁹⁸ Ampratwum, Armah-Atto, and Ashon, *Public Expenditure Tracking Survey in Education*.

¹⁹⁹ ISODEC, *Programme Budgeting in the Education, Health and Water Sectors in Ghana*.

²⁰⁰ ISODEC, *Programme Budgeting in the Education, Health and Water Sectors in Ghana*.

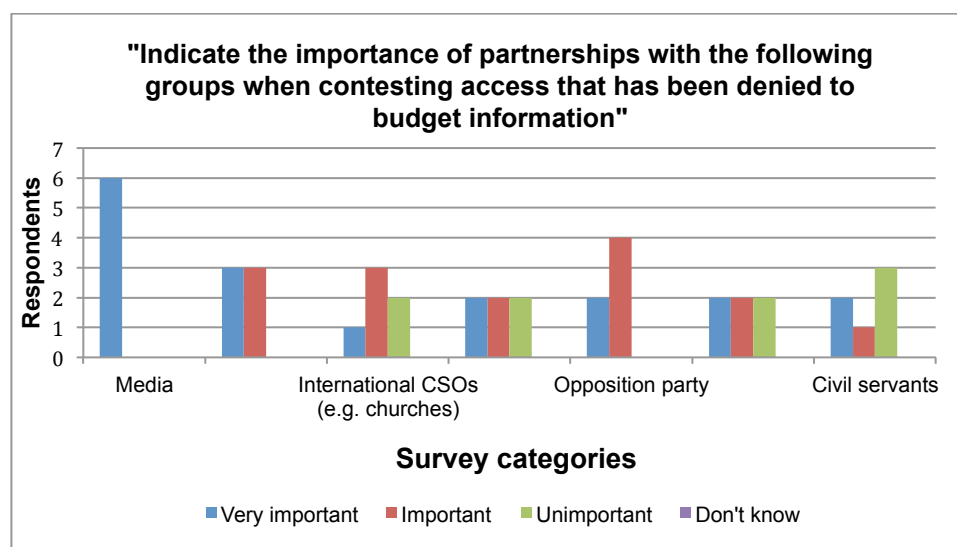
²⁰¹ Ye and Canagarajah, “Efficiency of Public Expenditure.”

was noted that one particular case of success was based on holding consultative forums to vet the findings from efforts rather than seek out maladministration.²⁰² This finding points to using “follow the money” efforts to highlight failings in the system and to suggest ways to address them rather than to enforce accountability.

Keeping all of the above in mind, regarding efforts to track extractive industry revenues, it appears possible to track mining revenues at a macro level, although, as pointed out above, it is difficult to work out if these are the proper, or correct amounts to which local areas are entitled by law. It also seems possible to audit mining payments to the government; however, there are some limitations around the fluctuating price of gold and specific booking/exchange rate calculations between companies and the government²⁰³ (also mentioned earlier; see Section 3). It seems that revenues from oil can be well-tracked; however, accountability over the management of oil is weak, as illustrated above.

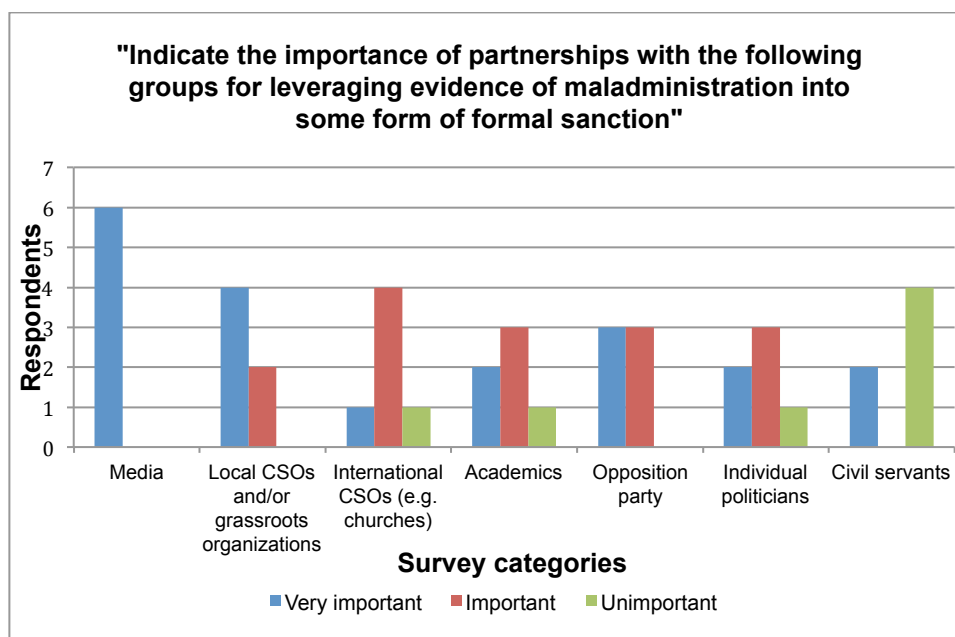
Notably, in cases where budget data was not available and in cases where civil society sought to pursue maladministration, there was general agreement among civil society organizations that broadcasting issues in the media were the most effective means to garner some response from the state (Figure 5).

Figure 5: Charts highlighting survey responses showing the importance of the media in Ghana when contesting access to budget data and when seeking formal sanction



²⁰² ISODEC, *Programme Budgeting in the Education, Health and Water Sectors in Ghana*.

²⁰³ Ghana Chamber of Mines, “Publish What You Pay” (2013).



Source: Research survey.

To conclude: Regarding CSO influence, it appears that groups have been more demonstrably successful at influencing policy and legislation than they have been at driving allocations of extractive industry revenues through the budget. Challenges in both cases appear to lie with the extent to which power is centralized within the executive and with the dysfunction within Parliament, which affords the executive excessive control over budget allocations and which allows laws to be circumvented.

In terms of efforts to address budget leakage or generate accountability responses in individual cases, it appears that these have been frustrated in many ways. These efforts only appear to be successful when implemented at a macro scale. As soon as efforts are made to trace the budget to the point of expenditure, they become compromised by capacity challenges and access to records. Notably, such efforts have not proved very successful, or transformative, when implemented as audit processes. Instead, they seem most effective when used as a means to build broader capacity in administering the budget. In this respect, successful accountability responses appear to be reliant on the alignment of other contextual factors (such as the help of whistleblowers or scandals at election time).

It seems then that maladministration continues in particular areas not because civil society does not have the reach, know-how, and resources to identify, monitor, and analyze—as is often claimed. Rather, there is a culture of impunity across public administration where disincentives for accountability and non-systematization of checks and balances are institutionalized. To date, CSO

successes appear relatively isolated, having had limited success in influencing this process in a way that meaningfully reforms power.

9. CONCLUSION

This report has sought to understand the means by which revenues from extractive industries are captured by the state as well as how decisions regarding the allocation of those revenues are made. In doing so, the work has sought to understand the institutional relationships that are meant to ensure that these processes are undertaken in a manner that is accountable to the citizens whose interests lie in the effective capture and judicious use of the wealth those resources produce.

While Ghana remains heavily dependent on natural resources, and appears to be developing them effectively to the ends (in the long run) of achieving GDP growth, the country shows worrying signs that returns on that growth, in terms of improving human development, are diminishing. Although such broad economic processes have many drivers, institutional barriers to the effective collection and management of revenues accruing from natural resources are key. Despite significant gains in democratic conduct in Ghana, at the heart of the problem appears to be a relationship between the branches of government in which the powers of the executive dominate those of the Parliament. This situation appears to be driven in part by capacity problems, but it is also a result of certain laws biasing the formal powers of the executive. In addition, there seems to be a problem of skewed incentives within Parliament whereby personal advancement within the political class results from acquiescing to the demands of the ruling party, rather than holding it to account.

The result of such a lopsided power relationship is that additional horizontal oversight institutions are also rendered dysfunctional. With their leadership appointed by the president, conflicts of interest arise in these institutions' holding government to account. Likewise, because these institutions lack resources, as well as investigative and prosecutorial authority, they have to rely on Parliament to be their champions. In a context where Parliament is dysfunctional, these institutions are rendered largely ineffective, or only effective in instances where their findings galvanize public outrage. Likewise, dominance of the executive has allowed for the independence of the judiciary to be compromised, rendering the function of the oversight institutions even more limited.

The outcome is that where laws and policies do exist for the purposes of ensuring the judicious management of natural resource wealth, contests over the interpretation of the law are not satisfactorily resolved. This outcome combines with insufficient oversight to drive high levels of ministerial discretion in the management of these resources. Accountability within such a system moves away from being manifest between citizens and elected officials and is instead

manifest in informal terms between members of the executive and aspirants to such positions. The result is that access to, and control over, national resources is leveraged to maintain positions of authority within this informal system, which in turn drives highly inefficient (from the perspective of improving social welfare) decisions over how resources should be managed.

Within this context, articulating the extent to which civil society efforts can be most effective is a complicated task. The following are three possible ways to drive improvements in revenue management:

1. Advocating for better designed oversight institutions
2. Campaigning around findings of scandalous maladministration that can be leveraged toward achieving some sort of sanction
3. Advocating for increased budget allocations and then attempting to follow the money to ensure that execution drives a real distribution of resources

Option 1 seems plausible, as in the case of the PRMA and creation of PIAC. That said, the success that such efforts might have if they focus on making sure that oversight bodies are independent, funded, and have both prosecutorial and investigative power is yet to be seen.

Option 2 has likewise proved effective, so long as advocates think strategically about the moments in which they try to galvanize scandals so as to take advantage of powerful allies or auspicious timing.

The case for option 3 is hard to discern. In terms of affecting budget priorities, while some results appear initially positive, determining causation is difficult. Further to this, the overall content of the budget suggests that civil society influence is limited. In terms of following the money and tracking budget expenditures, while these approaches may have had some success at a macro level (in terms of allocations), efforts to audit expenditure to the local level face significant challenges around access to financial records.

Notably, the theory of change behind options 1 and 2 is that one can affect long-term governance dynamics by shifting the incentives of decision-makers as a result of rendering them susceptible to sanction. That being said, this work suggests that so long as the balance of power remains in the hands of the executive branch, political advancement among elected officials will continue to happen more effectively by acquiescing to government demands than by opposing them. In such a context, one can expect individuals to simply risk unlikely sanction rather than certain exclusion from the political class. As such, an institutionalized lack of accountability is likely to persist.

In this regard, option 3 is worth further reflection. For while options 1 and 2 are about changing incentives through sanction, option 3 (especially if it reformulates the focus away from an audit) is about engaging citizens more closely in the

governance process. Because the dynamic that appears to sit at the root of accountability challenges in Ghana pertains to the concentration of power within the executive branch, such efforts might prove effective at driving accountability in ways that look beyond the horizon of direct campaign achievements. For only by engaging the citizenry in the politics of allocation and accountability can the executive's current ability to skew the incentives of oversight bodies be effectively challenged.

With the above in mind, a final possibility for reform might stem from more direct efforts at politicizing good governance. This approach includes generating a broad-based understanding of how politics is supposed to work, why good governance is necessary, and how it actually works. Only through this process, when popular legitimacy is tied to the effective ability to perform duties appropriate to one's political office, will the balance of power be pulled away from the executive branch as incentives start to align with good governance rather than with political acquiescence.

How exactly this change might be achieved is uncertain. Concepts of governance—and descriptions of institutional responsibilities—are complicated and often dry subjects. Politicizing these is therefore a tricky task. That said, popular discontent around corruption is already manifest, and rhetorical commitments to addressing it are already part of the platform of political legitimacy. What is needed is a public unpacking of this notion so that this popular sentiment can be focused on correcting systemically skewed incentives within the political class.

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APPENDIX

Interviews (Accra)

Name	Position	Date
Major Daniel Sowa Ablorh-Quarcoo	Chairman, PIAC	April 16, 2015
Mohammed Amin Adam	Executive director, ACEP	April 9, 2015
Anonymous	Former minister, expert on EI issues	Jan. 22, 2015
Anonymous	NDC MP	Jan. 17, 2015
Anonymous	Former senior civil servant, Ministry of Finance	Jan. 17, 2015
Anonymous	NDC minister	Jan. 13, 2015
Anonymous	DCE, Northern Region	Jan. 9, 2015
Anonymous	Former NPP Cabinet minister, MP	Dec. 20, 2014
Anonymous	Former PIAC member, NDC minister	Dec. 19, 2014
Samuel K.B. Asante	Former deputy attorney general	Jan. 14, 2015
Hon. George Gyan Baffour	Former minister of finance, current MP	Dec. 10, 2014
Samual Codjoe	Executive director, APRM	Dec. 17, 2014
Newman Kwadwo Kusi	Executive director, Institute for Fiscal Studies	Jan. 11, 2015
Hon. Mathew Nyndam	MP, Kpandai	Dec. 15, 2014
Hon. Anthony Akoto Osei	NPP MP	Jan. 20, 2015
Linda Ofori-Kwafo	Executive secretary, Ghana Anti-Corruption Coalition	April 16, 2015
Richard Quanyson	Commissioner, Commissioner on Human Rights and Administrative Justice	Dec. 9, 2014
Hon. Nii Lantey Vanderpuye	Deputy minister, Ministry of Local Government and Rural Development	Dec. 12, 2014
George Yeboah	NDC candidate	Dec. 15, 2014



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